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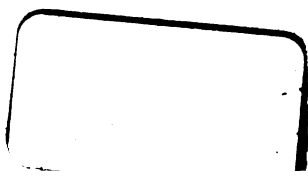
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THE
INDIAN COMPANIES' ACT,

VI. OF 1882.

WITH NOTES AND TABLE

SHOWING THE CORRESPONDING SECTIONS IN THE ENGLISH
COMPANIES' ACT 1862 (25 AND 26 VIC. C. 89) AND THE
INDIAN COMPANIES' ACT X. OF 1866.

ALSO

NOTES OF INDIAN DECISIONS AND LATEST ENGLISH CASES,

AND

AN APPENDIX

CONTAINING THE SECTIONS IN THE INDIAN ACTS RELATING TO
COMPANIES; ALSO TABLE B TO ACT XIX. OF 1857; AND THE
LITERARY SCIENTIFIC AND CHARITABLE SOCIETIES'
ACT XXI. OF 1860; AND THE PRESIDENCY BANKS'
ACT, 1879, AND AMENDING ACT, 1879.

Ames
BY
LOUIS P. RUSSELL, B.A.,
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PREFACE.

THE object of this Book is merely to form a convenient guide to the Indian Companies' Act VI. of 1882. The English cases contained in it were begun to be collected shortly after the publication of that Act, and although the subsequent appearance of the Fourth Edition of Mr. Buckley's well-known work rendered the collection of those cases here unnecessary, it was deemed desirable to retain them as they originally were. Every endeavour has been made not to plagiarise that work, to which, however, the present author's obligations will be found apparent throughout.

The author has, it is hoped, noticed every decision bearing on Companies which is reported in the Indian Reports.

The Indian Companies' Act VI. of 1882 contains hardly anything that is not to be found in the English Companies' Acts of 1862 and 1867, and one or two sections of the English Companies Act, 1877, as will be seen on reference to the Table of corresponding sections herein.

Table A of the present Act corresponds precisely with Table A to the English Act, 1862, and Act X. of 1866 in India; but in article 57 (p. 228 herein) a slight addition is made.

The present Act, however, contains several new provisions and additions, the following of which are the most important, viz.:—

In sec. 58 (p. 49), the insertion of the words "fraudulently or."

To sec. 61 (pp. 53-54), the addition of explanations.

To sec. 68 (p. 62), the addition of the explanation there.

In sec. 88 (p. 78), a modification of the comprehensiveness of that section (which corresponds with sec. 38 of the English Act, 1867).

The additions and explanations to sec. 131 (pp. 103, 104).

The addition to sec. 141 (p. 118), and proviso to sec. 146 (p. 123). The addition to section 174 (p. 139), to sec. 204 (p. 160), to sec. 212 (p. 165), to sec. 214 (p. 167). Two new sections (218, 219), which provide for the reference of a winding-up to a District Court and the transfer of a winding-up from one District Court to another, are to be found at pp. 172, 173. At p. 195, sec. 249, which prohibits a Company from buying its own shares, is also new.

It is much to be regretted that no attempt has been made in this Act to prohibit or put some practical legislative restraint on what has become in Bombay, at all events, a most mischievous abuse of the powers of the Agents of Companies, who are generally styled the Secretaries, Treasurers, and Agents.

In that Presidency it has become the constant practice to insert in the Articles of Association provisions for the employment of a firm or of individuals as Agents of the Company, at a high and often an exorbitant remuneration, for a long term of years, or for life, or even in perpetuity. The persons interested under these provisions contrive to keep sufficient shares under their control to prevent the passing of a special resolution to alter these provisions, and the result is not unfrequently that the Company's interests are sacrificed to those of its employes, of whom the shareholders are unable to get rid, however great and well-deserved their dissatisfaction. The attempt, in article 57 (p. 228), to prevent one firm getting the management of a Company too much into its own hands, is not likely to be successful, inasmuch as the articles can be altered by special resolution.

The references to the corresponding sections in the English Act, 1862, and Indian Act, 1866, and to the corresponding articles in Table A to those Acts, are printed in red ink, and references will also be found to the sections in Act XIX. of 1857. Cases decided by the Court of Appeal in England are referred to in the Reports as Ch. Div. or Q. B. Div., as the case may be.

No new rules have as yet been published by any of the High Courts in India; it was therefore deemed desirable to print the existing rules of the Bombay High Court and the Forms thereto, pointing out at the foot of each the particulars in which they differ from the general orders of November 1862 in England, and the Bengal rules respectively.

The Appendix contains, it is hoped, all the sections in the various Indian Acts relating to Companies.

L. P. R.

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ADDENDA ET CORRIGENDA.

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- 11 17 lines from bottom of page), *add* "Under this Act, sec. 195, a Company cannot purchase its own shares."
- 38, *Add reference to Cotton v. Pegu Saw Mills Co.*, 9 *Suth. W. R.* 539, where it was held that the liability of a registered shareholder, as member of a Company, to contribute is a *prima facie* liability only, and it is open to him to show that although his name is on the register, yet he did not agree to become a member. In that case the appellants were not cognizant of (much less did they assent to) the registration of their names as shareholders, and they had refused to receive any shares or pay up any calls or deposits; the only step they had taken having been putting forth a prospectus and affixing their names therein to a certain number of shares, which could not be said to be an agreement to become members of the Company.
- In *Goosery Cotton Mills Co. v. Steel*, 2 *Hyde* 238, the Articles of Association provided that "No person shall be deemed a shareholder or entitled to any benefit as such unless he shall have executed these presents or a copy thereof." The defendant had applied for 100 shares in the Company and on their being allotted to him had paid Rs. 1,000 deposit; his name was placed upon the register of shareholders, but he refused to sign the Articles of Association, and it was held that he was not liable as a shareholder. This case however, it should be observed, was decided under Act XIX. of 1857.
- 51 and 79, *add* "See further as to action for deceit,"—*Bellairs v. Tucker*, 13 *Q. B. D.* 562.
- 96 (margin) *insert* "position" *instead of* "petition of representatives."
- 99 Ten lines from bottom of page, *insert* "888" after *I. L. R.* 5 *Calc.*
- 104 Twenty-five lines from bottom of page, *add* "see further, sec. 132, *post*."
- 104 Eight lines from bottom, *add* "*IN RE Uruguay Co.*, 11 *Ch. D.* 372, was distinguished in *IN RE Olathe Co.* 27 *Ch. D.* 278."
- 123 Twelfth line from top *read* "*I. L. R.* 7 *Bom.* 494."
- 127 *Dele* the line beginning "as to interest on calls, &c."
- 135 *Add at foot of page*, "and by article 156 of the second schedule to the Limitation Act, the period of ninety days is fixed for an appeal under the Code of Civil Procedure to a High Court, except in the cases provided for by Nos. 151 and 153 in the schedule—the time to run from the date of the decree or order appealed against."
- 166 In fifth line of red ink portion, *substitute* "184" for "185."
- 219 In 24th line from top, *read* "Fenn" for "Fern."
- 245 Three lines from bottom, *insert*: (i) secs. 69, 95, *supra*.
- 264 In margin to rule 6, *read* "order" for "petition."

THE INDIAN COMPANIES' ACT, 1882.

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ACT No. VI. of 1882.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor-General
on the 24th February 1882.)*

AN ACT FOR THE INCORPORATION, REGULATION AND WINDING-UP OF TRADING COMPANIES AND OTHER ASSOCIATIONS.

WHEREAS it is expedient to amend the law relating Preamble.
to the incorporation, regulation and winding-up of
Trading Companies and other Associations; It is
hereby enacted as follows :—

PRELIMINARY.

1. This Act may be cited as “The Indian Com- Short title.
panies’ Act, 1882.” It extends to the whole of Local extent.
British India: it shall come into force on the first Commence-
day of May, 1882; and the time at which it comes ment.
into force is hereinafter referred to as the commence-
ment of this Act.

Citation of Act X. of 1866, “Indian Companies’ Act,
1866,” s. 1, and of 25 and 26 Vic., c. 89, the “Companies’
Act, 1862,” s. 1.

“British India,” in Act X. of 1866, s. 3, was thus defined—“the territo-
ries which are or may become vested in Her Majesty or her successors by
the Statute 21 and 22 Vic., c. 106, entitled “An Act for the better
government of India.”

By the “General Clauses Act I. of 1868,” s. 2, “British India” shall
mean the territories for the time being vested in Her Majesty by the
Statute 21 and 22 Vic., c. 106, other than the Settlement of Prince of
Wales’ Island, Singapore and Malacca. The Straits Settlements ceased
to be part of India by 29 and 30 Vic., c. 115.

Commencement of Act, cf. s. 2 of the “English Companies’ Act, 1862,”
(25 and 26 Vic., c. 89) and s. 2 of “Indian Companies’ Act X. of 1866,”
which came into force on the 1st May 1866 and the 2nd November 1862
respectively.

2. On and from the commencement of this Act, Repeal of
the Indian Companies’ Act, 1866, shall be repealed. Act X. of
But such repeal shall not affect— 1866.

(a) the incorporation of any Company registered
under the said Act or any Act thereby repealed ;

(b) any right or privilege acquired or liability incurred under the said Act or any Act thereby repealed;

(c) Table B in the Schedule annexed to Act No. XIX. of 1857 or any part thereof, so far as the same applies to any Company existing at the time of the commencement of this Act.

And all references to the said Indian Companies' Act, 1866, in Acts or Regulations passed before the commencement of this Act shall be read as if made to this Act, and all rules made, fees directed, resolutions passed and other things duly done under the same Act shall be deemed to be respectively made, directed, passed and done under this Act; and all Companies under the same Act shall be deemed to be Companies under this Act.

See Sec. 220, "Indian Companies' Act X. of 1866," and Sec. 206, "English Companies' Act, 1862," (25 and 26 Vic., c. 89).

Section 219 of the "Indian Companies' Act" repealed the Acts specified in the Third Schedule thereto, viz., No. XLIII. of 1850, an Act for the Regulation of Joint Stock Companies; No. XIX. of 1857, an Act for the Incorporation and Regulation of Joint Stock Companies and other Associations either with or without limited liability of the members thereof; and No. VII. of 1860, an Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability.

(c) The regulations contained in Table B in the Schedule to Act XIX. of 1857 will, therefore, continue to apply to those Companies to which they applied before 1st May 1882. See Sec. 221, *post*.

For Table B in the Schedule to Act XIX. of 1857, see *post* Appendix.

The corresponding sections in the Act of 1866 (s. 220) and the English Act of 1862 (s. 206) further provided that no repeal should affect anything duly done under any Acts thereby repealed . . . or any penalty, forfeiture, or other punishment incurred in respect of any offence against any Act by those Acts respectively repealed.

Such a clause is now unnecessary under the provisions of Sec. 6 of Act I. of 1868, General Clauses Act. As to the effect of Sec. 6 of the General Clauses Act, the following cases may be referred to:—*Imp. v. Dilgour Misser*, 1 L. R. 2 Calc. 225; *Imp. v. Malna*, *ibid.*, 1 All. 599; *Re Ratansi Kalianji*, *ibid.*, 2 Bom. 148; *Ranjit Singh v. Meherban Koer*, *ibid.*, 3 Calc. 662; *Syed M. Hossein v. Haji Abdullah*, *ibid.*, 3 Calc. 727.

Where the law is altered while an action is pending, the law as it existed when the action was commenced must decide the rights of the parties; unless the Legislature by the language used show a clear intention to vary the mutual relations of such parties. *Guzerat Trading Co. v. Trikamji Velji*, 3 Bom. H. C. O. C. J. 45.

For the historical sketch of the law relating to Companies see Lindley on Partnership, 4th ed. p. 5 *et seqq.*

Interpreta-
tion-clause.

3. In this Act, unless there be something repugnant in the subject or context, —

“Insurance Company” means a Company that carries on the business of insurance either solely or in common with any other business or businesses; “Insurance Company.”

“Court” means the principal civil Court of original jurisdiction in a district, and includes the High Court in the exercise of its ordinary original civil jurisdiction; “Court.”

“District Court” means the principal civil Court of original jurisdiction in a district, but does not include the High Court in the exercise of its ordinary original civil jurisdiction. “District Court.”

Sec. 3, “English Companies’ Act (25 and 26 Vic., c. 89), 1862,” which merely defined “Insurance Company.”

Sec. 3, “Indian Companies’ Act X. of 1866.”

The doubts as to what was an Insurance Company raised by the decisions in *London Monetary Co. v. Smith*, 3 H. and N. 543; 27 L. J. Ex. 479; and *The London and Provincial Provident Society v. Ashton*, 12 C. B. (N. S.) 709; 11 W. R. 152, were removed by this section. Buckley, 4th ed., p. 1; Shelford on Companies, 2nd ed., 177. “Insurance Company.”

“Court,” “District Court” as in Sec. 3, “Indian Companies’ Act, 1866,” by which section “year” and “months” and also “Local Government” and “High Court” were further defined, but such definitions are now provided for by the “General Clauses Act I. of 1868,” Sec. 2, clauses 4, 10 and 11.

4. No Company, Association or Partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a Company under this Act, or is formed in pursuance of an Act of Parliament or some other Act of the Governor-General in Council, or by royal charter or Letters Patent; and no Company, Association or Partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the Company, Association or Partnership, or by the individual members thereof, unless it is registered as a Company under this Act, or is formed in pursuance of some other Act or of Letters Patent. Prohibition of partnerships exceeding certain number.

Sec. 4, “English Companies’ Act (25 and 26 Vic., c. 89), 1862,” *verbatim* so far as is material, and Sec. 4, “Indian Companies’ Act X. of 1866,” *verbatim*.

Cf. Act XIX. of 1857, ss. 1, 2.

This section makes Companies which are formed after the commencement of the Act, and required hereby to register, illegal, unless registered.

As to the application of this Act to Companies registered under the Joint Stock Companies’ Act XIX. of 1857 or VII. of 1860—see Part VI. *post*.

As to Companies authorized to register under this Act—see Part VII., *post*.

And as to the application of this Act to unregistered Companies—see Part VIII., *post*.

“Gain.”

As to the meaning of “an association, &c., of more than twenty persons for gain” within the above section—see *Smith v. Anderson*, 15 Ch. Div. 247, where *Sykes v. Beadon*, 11 Ch. D. 170, was disapproved and the words “Company, Association and Partnership” discussed.

See further *IN RE The Padstow Total Loss and Collision Assurance Association*, 20 Ch. Div. 137; 51 L. J. Ch. Div. 344, where it was held upon the petition of an assignee of a member’s claim that the diminution of a loss was “gain” within the meaning of this section, and that although the business of the Association had not for its object the acquisition of gain by the Association, it had for its object the acquisition of gain by the individual members; that as it consisted of more than twenty members and was not registered, its formation was forbidden by Sec. 4; and the Court could not recognise it as having any legal existence, and the order which had been made for winding it up was discharged; and *Jennings v. Hammond*, 9 Q. B. D. 225, where it was held that a promissory note given by a member of a Society which was illegal under Sec. 4 of the Companies’ Act, 1862, to the trustee of the Society to secure a sum of money advanced to such member under the rules of the Society was invalid, and no action could be maintained thereon.

In *Shaw v. Benson*, 11 Q. B. Div. 563, *IN RE Padstow & Co.* was followed and *Jennings v. Hammond* approved.

In *The Guzerat Trading Co. v. Trikamji Velji*, 3 Bom. H. C. O. C. J. 45, a suit was filed on the 28th April 1866 by a Joint Stock Company, after registration, to recover damages for breach of a contract made with the defendants before registration, and it was held (by *Couch, C. J.*, and *Arnould, J.*, affirming the decree of *Sargent, J.*) that the contract was illegal under Sec. 2 of Act XIX. of 1857, and the plaintiffs could not sue upon it. See also *Maucherji Sorabji v. C. N. Cama*, 3 Bom. H. C. O. C. J. 159.

An association of artisans for the purpose of enhancing the price of their work by bringing all the business of the trade into one shop and dividing the prices of the work done amongst the members according to their skill, is an association that has for its object the acquisition of gain, and if consisting of more than twenty members must be registered. *Bhikaji Sabaji v. Bapu Saju*, 1 L. R. 1 Bom. 550.

But that a company cannot allege its own illegality as a defence, and whether in some instances an illegal association may be wound up upon the petition of a *bonâ fide* creditor, and even upon that of a contributory, see *Buckley*, 4th ed, p. 4.

“Formed,” see *Shaw v. Simmons*, 12 Q. B. D., 117.

“The individual members thereof.”

“The insertion of the words ‘by the individual members thereof’ was occasioned by the decisions in *The Queen v. Whitmarsh*, 15 Q. B. 600; 19 L. J., Q. B. 469, and *Bear v. Bromley*, 18 Q. B. 371; 21 L. J., Q. B. 354, which have been called to our attention. It was held in these cases, before the Companies’ Act, that the Companies which came before the Court were not Companies which had the acquisition of gain to the individual members for their object, and the statutes were so worded as to be less extensive in cases such as we have now to deal with, and therefore those words were put in to get rid of these cases.” Per *Lindley, L. J.*, *IN RE Padstow, &c., Association*, 51 L. J. Ch. Div. at p. 352 and 20 Ch. Div. at p. 149.

Division of Act.

5. This Act is divided into nine Parts, relating to the following subject-matters:—

The first Part—to the constitution and incorporation of Companies and Associations under this Act;

The second Part—to the distribution of the capital and liability of members of Companies and Associations under this Act;

The third Part—to the management and administration of Companies and Associations under this Act;

The fourth Part—to the winding-up of Companies and Associations under this Act;

The fifth Part—to the Registration Office;

The sixth Part—to the application of this Act to Companies registered under Act No. XIX. of 1857 (*for the incorporation and regulation of Joint Stock Companies and other Associations either with or without limited liability of the members thereof*) and Act No. VII. of 1860 (*to enable Joint Stock Banking Companies to be formed on the principle of limited liability*), or either of them;

The seventh Part—to Companies authorized to register under this Act;

The eighth Part—to the application of this Act to unregistered Companies;

The ninth Part—to miscellaneous provisions.

Sec. 5, “English Companies’ Act (25 & 26 Vic., c. 89), 1862,” and Sec. 5, “Indian Companies’ Act X. of 1866.”

PART I.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Memorandum of Association.

6. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association (i), and otherwise complying with the requisitions of this Act in respect of registration form an incorporated Company (ii), with or without limited liability. Mode of forming Company.

Explanation.—Foreigners are persons within the meaning of this section, although the whole or any part of the business of the proposed Company is intended to be transacted out of British India.

Sec. 6, "English Companies' Act (25 and 26 Vic., c. 89), 1862," and Sec. 6, "Indian Companies' Act X. of 1866" *verbatim*.

(i) See Forms in Sched. II. *post*.

(ii) See ss. 40, 41 *post*.

Foreigners.

Cf. also s. 1 of Act XIX. of 1857.

The explanation however is new, and it extends the decisions *IN RE General Company for the Promotion of Land Credit*, L. R. 5 Ch. Ap. 363; and L. R. 5 H. L. 176 (sub nom. *Princess of Reuss v. Bos*) to cases in which the whole of the business of the proposed Company is intended to be transacted out of British India.

Quære. The effect of this explanation on the decision in *Bulkeley v. Schultz*, L. R. 3 P. C. 764, which was approved in *Bateman v. Service*, 6 Ap. Ca. 386.

As to Foreign Companies generally see Lindley on Partnership 4th ed. p. 1483, Appendix No. 1, where the subject will be found fully discussed.

The purpose must be *lawful*; for instances of companies and partnerships, the purposes of which were not lawful, see Lindley on Partnership, Book I., Chap. 6, and Shelford on Companies, 2nd ed., p. 199, *et seq.*

As to associations not for profit see sec. 26 *post*, and Lindley on Partnership, 4th ed. p. 168.

Mode of limiting liability of members.

7. The liability of the members of a Company formed under this Act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the Company in the event of its being wound up.

Directors with unlimited liability.

Where a Company is formed as a limited Company, the liability of the directors or managers of such Company, or of the managing directors, may, if so provided by the memorandum of association, be unlimited.

Sec. 7 of the "English Companies' Act (25 and 26 Vic., c. 89) 1862," and Sec. 7 of the "Indian Companies' Act X. of 1866," *verbatim*.

The clause as to the unlimited liability of directors, if so provided by the memorandum of association, is similar in terms to Section 4 of the "English Companies' Act, 1867," 30 and 31 Vic., c. 131 (an Act to amend the "Companies' Act, 1862").

See further Sec. 62 *post*, as to the liability of the director or manager whose liability is unlimited.

See the note to sec. 7 in Buckley, 4th ed., pp. 7 and 8.

8. Where a Company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a Company limited by shares, the memorandum of association (i) shall contain the following things (that is to say):—

Memorandum of association of a Company limited by shares.

(a) the name of the proposed Company with the addition of the word "Limited" as the last word in such name;

(b) the part of British India in which the registered office of the Company is proposed to be situate;

(c) the objects for which the proposed Company is to be established;

(d) a declaration that the liability of the members is limited;

(e) the amount of capital with which the Company proposes to be registered, divided into shares of a certain fixed amount:

Subject to the following regulations:—

(f) that no subscriber shall take less than one share;

(g) that each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

Sec. 8 of the "English Companies' Act (25 and 26 Vic., c. 89), 1862," and Sec. 8 of the "Indian Companies' Act X. of 1866."

(i) See Sched. II., Form A, *post*, and Palmer's Company Precedents, p. 96.

Cf. 19 and 20 Vic., c. 47, s. 5, and Act XIX. of 1857, s. 3.

As to how *general* words describing the objects of a company in the memorandum of association are to be construed, see *IN RE German Date Coffee Co.*, 20 Ch. Div. 169.

In the case of a company which registers under Section 8, the company is *ipso facto* precluded from devoting any of its capital to any other objects than those stated in the memorandum of association. "It seems to me," says Bowen, L. J. (in *Guinness v. Land Corporation of Ireland*, 22 Ch. Div. at p. 380), "that the collocation of the two things, the compulsory statement of the objects of the company in the first place, and the compulsory statement of the capital in the second place, produces at once the legal obligation that the company shall devote to those objects alone the capital which is subscribed, and I think that the other sections of the Act are based upon the assumption that this is so."

As to the articles of association which may, in the case of a Company limited by shares, accompany the memorandum, see Sec. 37 *post*.

Memorandum of association of a Company limited by guarantee.

9. Where a Company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the Company in the event of the same being wound up (hereinafter referred to as a Company limited by guarantee), the memorandum of association (i) shall contain the following things (that is to say):—

(a) the name of the proposed Company, with the addition of the word “Limited” as the last word in such name;

(b) the part of British India in which the registered office of the Company is proposed to be situate;

(c) the objects for which the proposed Company is to be established;

(d) a declaration that each member undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of winding-up the Company, and for the adjustment of the rights of the contributories amongst themselves such amount as may be required, not exceeding a specified amount.

Sec. 9, “English Companies’ Act (25 and 26 Vic., c. 89), 1862,” *mutatis mutandis*; and Sec. 9 of the “Indian Companies’ Act of 1866,” *verbatim*.

(i) See Forms B and C in Sched. II. *post*, which apply to Companies limited by guarantee having their capital not divided into shares and divided into shares respectively, and the note to Section 37 *post*, and Palmer’s Company Precedents, p. 98.

Clause (d).

In *Lion Mutual Marine Insurance Association v. Tucker*, 12 Q. B. Div. 176, the defendant, the owner of a ship insured and entered in a certain class of a mutual marine insurance association and a member of the association, was held liable to pay his proportion of losses to an amount beyond £5 in respect of vessels entered in the same class as his own; although by a declaration in the same words as this clause he had attempted to limit his liability to a sum not exceeding £5; because the debts and liabilities mentioned in the declaration were those of the association *as against its members*, and were not the debts and liabilities to which the members by the rules of the association were to contribute *as insurers or as assured*.

In the case of a company limited by guarantee or unlimited, articles of association *must* accompany the memorandum. Sec. 37 *post*.

10. Where a Company is formed on the principle of having no limit placed on the liability of its members (hereinafter referred to as an unlimited Company), the memorandum of association (i) shall contain the following things (that is to say)—

Memorandum of association of an unlimited Company.

(a) the name of the proposed Company;

(b) the part of British India in which the registered office of the Company is proposed to be situate;

(c) the objects for which the proposed Company is to be established.

Sec. 10 of the "English Companies' Act (25 and 26 Vic., c. 80), 1862," *mutatis mutandis*; and Sec. 10 of the "Indian Companies' Act X. of 1866," *verbatim*.

(i) See Form D., Sched. II. *post*, and Palmer's Company Precedents, p. 102.

"When dealing with the registration of unlimited Companies the Legislature in Section 10 only insists upon the registration of the objects for which the Company is to be established, and the liability being unlimited, there is no provision as to stating the amount of capital," per *Bowen, L. J.*, in *Guinness v. Land Corporation of Ireland*, 22 Ch. Div. at p. 379.

11. The memorandum of association shall be signed by each subscriber in the presence of, and be attested by, one witness at the least. It shall, when registered, bind the Company and the members thereof to the same extent as if each member had subscribed his name thereto (i), and there were in the memorandum contained, on the part of himself, his heirs, executors and administrators, a contract to observe all the conditions of such memorandum subject to the provisions of this Act.

Signature and effect of memorandum of association.

See Sec. 11 of the "English Companies' Act (25 and 26 Vic., c. 89), 1862," and Sec. 11 of the "Indian Companies' Act X. of 1866," which begin thus:—"The memorandum of association shall bear the same stamp as if it were a deed, and shall be signed," &c.

(i) The English Statute adds "and affixed his seal" after the words "subscribed his name thereto."

By cl. No. 43 of Sched. I. to the Stamp Act I. of 1879, the stamp on a memorandum of association is fixed at Rs. 15. *Appendix, post*.

"In the 'Indian Contract Act IX. of 1872' the distinction between the several kinds of contracts is no longer preserved, and a contract of record or a contract under seal is of no higher efficacy than a simple contract." *Macrae on The Indian Contract Act*, p. 2.

Similarly the effect of Sec. 39 (*post*, and note thereto) is to make the articles of association, when registered, binding "on the Company and the members thereof to the same extent as if each member had subscribed his name thereto."

For the definition of "members" see Sec. 45, *post*.

Memorandum
the Charter of
the Company.

The memorandum of association is the Charter of the Company, and defines the limitation of the power of the Company. The Company is, so to speak, identified by its memorandum of association—*Anandji Visram v. The Nariad Spinning and Weaving Co.*, I. L. R. 1 Bom. 320, and *Ashbury Co. v. Riche*, L. R. 7, H. L. 653.

Difference be-
tween memo-
randum and pro-
spectus.

In *Anandji Visram v. The Nariad Spinning and Weaving Co.*, *ubi supra*, the distinction is clearly pointed out between the case of a person who agrees to take shares in a projected Company upon the faith of a proposed prospectus, and one who does so upon the faith of a document purporting to be the proposed memorandum of association of such a Company; as follows:—A prospectus is in the nature of instructions only for the professional man to put into shape, in the same way as an agreement is often the foundation for a deed which may properly contain covenants and provisions not found in the agreement itself; and the only question which can arise is whether the obligations incurred under the memorandum do or do not go beyond those which would have been incurred under the prospectus; but the memorandum of association is the Charter of the Company, and defines the limitation of the power of the Company. The Company is, so to speak, identified by its memorandum of association. A person therefore, who is asked to take shares in a projected Company of which he is shown the memorandum of association, and consents to do so, does so on the full understanding that the document shown to him, or a true copy of it, will be registered as the memorandum of association. The Company in which he agrees to take shares is the Company to be incorporated by the registration of that document as its memorandum of association, and no other Company. See this case further referred to, *post*.

Power of
certain Com-
panies to
alter memo-
randum of
association.

12. Any Company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned (i), as to increase its capital (ii), by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock (iii); but, save as aforesaid, and save as hereinafter provided, no alteration shall be made by any Company in the conditions contained in its memorandum of association (iv).

Sec. 12 of "English Companies' Act (25 and 26 Vic. c. 89), 1862," and Sec. 12 of "Indian Companies' Act X. of 1866," *verbatim*, with the exception that in those Acts after the words "and save as hereinafter provided," there followed the words "in the case of a change of name." This limitation is now no longer necessary, having regard to the sections which follow. See the notes thereto.

(i) Ss. 76, 77, *post*.

(ii) S. 57. See Sched. I., Table A, clauses 26-28.

(iii) Ss. 51, 52. See Sched. I., Table A, cl. 23-25.

(iv) See Ss. 76, 221, 240 (*post*) as to alterations in the articles.

Cf. Act XIX. of 1857, S. 42.

Under this section a Company can increase or consolidate its capital or convert its paid-up shares into stock without a special resolution; see Buckley, 4th ed., 485.

For the reasons for this section being confined to the case of Companies limited by shares, see Buckley, 4th ed., pp. 11 and 12.

The objects for which a Company is formed, and which are defined in the memorandum of association, cannot be extended by the articles, and a contract made by the directors of a Company upon a matter not included in the memorandum of association is *ultra vires* of the directors, and is not binding on the Company. Nor can such a contract be rendered binding on the Company, though afterwards expressly assented to at a general meeting of shareholders. Being in its inception void, as beyond the provisions of the statute, it cannot be ratified even by the assent of the whole body of shareholders, *Ashbury Co. v. Riche*, L. R. 7 H. L. 653. But the doctrine of *ultra vires*, as explained in that case is to be applied reasonably, so that whatever is fairly incidental to these things which the Legislature has authorized by an Act of Parliament, ought not (unless expressly prohibited) to be held as *ultra vires*. See *Attorney General v. Great Eastern Ry. Co.*, 5 Ap. Ca. 473, and see *London and North Western Ry. Co. v. Price*, 11 Q. B. D. 487. "Ultra vires."
Doctrine to be reasonably applied.

But as to acts which are within the memorandum but *ultra vires* the articles, or which, though *intra vires* the articles, have not been done in the manner directed by the articles, see Buckley, 4th ed., 13, and the cases there cited.

But when the memorandum of association embodies particulars not required by the statute, it does not follow that those particulars are immutable, *per Fry, J.*, in *Winstone's case*, 12 Ch. D. 251, adopting the view of Jessel, M. R., in *Duke's case*, 1 Ch. D. 620.

When the memorandum of association of a limited Colliery Company gave the Company power to do all things which it should consider conducive to the attainment of its objects, but did not in terms give any power to purchase its own shares, it was held that there was nothing illegal in a clause in the articles of association authorizing a purchase of the Company's shares by the directors, not for profit, but for carrying into effect an arrangement considered to be for the benefit of the Company: and that inasmuch as the shares so purchased could be re-issued by the Company, such a purchase did not reduce the capital of the Company in any sense in which such reduction was prohibited by the Companies' Acts. *IN RE Dronfield Silkstone Coal Co.*, 17 Ch. Div. 77, see *per Cotton, L. J.*, pp. 94, 95; where it was also held that the Company having confirmed and taken the benefit of the transaction, could not impeach it, and the liquidator of the Company had no better right to do so. Purchase of Company's shares by directors.

A guarantee by the vendor of a Colliery of a dividend to the shareholders in the Company formed to purchase it is not a contract for the repayment or return of part of the capital, and consequently is not an evasion of section 12. *IN RE South Llanharra Colliery Co.*, ex-parte *Jegon*, 12 Ch. Div. 503.

The articles of association of a Company cannot, except in the cases provided for by sec. 12 of the Companies' Act 1862, and except in the matters included in the amending Acts of 1867 and 1877, modify the memorandum of association in any of the particulars required by the Act to be stated in the memorandum. Therefore an article of association which purported to make the capital produced by the issue of B shares applicable to purposes not within the objects of the Company as defined by the memorandum of association, and in a way not incidental or conducive to the attainment of those objects was held invalid, and the directors of the Company were restrained from acting upon it. *Guinness v. Land Corporation of Ireland*, 22 Ch. Div. 349.

If the articles conflict with the memorandum, the former must give way to the latter, for that is the more important document of the two, and cannot be altered except in the particulars specified in the Acts. Lindley, 4th ed., 169, and Buckley, 4th ed., 13.

The memorandum of association may be further so modified as to—

1. make the directors' liability unlimited. Sec. 76 *post*;
2. to reduce the capital and shares. Sec. 13 *post*;
3. to divide the shares into shares of smaller amount. Sec. 24 *post*.

For Forms of Resolutions:—(a) to alter articles; (b) to increase capital; (c) to convert shares into stock; (d) to consolidate shares; (e) to subdivide shares; (f) to reduce capital, &c., see Palmer's Company Precedents, 3rd ed., pp. 193—208.

Reduction of Capital and Shares.

Power to
Company
to reduce
capital.

13. Any Company limited by shares may, by special resolution (i), so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital (ii); but no such resolution for reducing the capital of any Company shall come into operation until an order of the Court is registered by the Registrar of Joint-stock Companies, as is hereinafter mentioned (iii).

Explanation I.—The word “capital” includes paid-up capital.

Explanation II.—The power to reduce capital conferred by this section includes a power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the Company; and paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the Company; and to the extent to which such liability is not extinguished or reduced, it shall be deemed to be preserved, notwithstanding anything hereinafter contained.

Sec. 9 of “English Companies’ Act (30 and 31 Vic., c. 131) 1867,” *verbatim*.

The Explanations are taken from sec. 3 of the Companies’ Act, 1877 (40 and 41 Vic., c. 26).

- (i) S. 77 *post*.
- (ii) S. 12 *supra*.
- (iii) S. 18 *post*.

This section requires a special resolution (as to which see sec. 77 *post*) to enable a Company to reduce its shares.

"The reduction of capital and shares can only be effected in the manner provided by the Acts. Where, therefore, the case is not one under the Act of 1880 (*i. e.* the English Companies' Act (43 Vic., c. 19) 1880), but is a case where the act in question ought to be authorized by the articles, then if the articles do not contain the power, there must be, *first*, a special resolution altering the regulations of the Company so as to authorize it to modify the conditions contained in the memorandum of association; *secondly*, a special resolution modifying the conditions contained in the memorandum; and, *thirdly*, an order of the Court, duly registered, confirming the reduction." Buckley, 4th ed., 485.

See the summary of the procedure relating to reduction of capital, Lindley, 4th ed., 619, 620.

As to the meaning of the word "capital" and the effect of a Company purchasing its own shares, see Buckley, 4th ed., 483, 484.

In *IN RE Plaskynaston Tube Co.*, 23 Ch. D. 542, it was held that a limited Company may, when so authorized by its articles of association, issue shares at a discount under a contract duly registered under sec. 25 of the Companies' Act, 1867 (sec. 28 *post*), and see *IN RE Ince Hall Rolling Mills Co.*, 23 Ch. D. 545, *note*.

For Forms of Resolutions, for reducing capital, see Palmer's Company Precedents, 3rd ed., p. 199.

14. The Company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the Court may fix, the words "and reduced" as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the Company.

Company to add "and reduced" to its name for a limited period.

Sec. 10 of English Act (30 and 31 Vic., c. 131) 1867.

"Until such date as the Court may fix," see the cases collected in Buckley under the above sec., 4th ed., 485, and *IN RE Patent Ventilating Granary Co.*, 12 Ch. D. 254.

15. A Company which has passed a special resolution (i) for reducing its capital may apply to the Court by petition for an order confirming the reduction, and, on the hearing of the petition, the Court, if satisfied that, with respect to every creditor of the Company who, under the provisions of this Act, is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined, or has been secured as hereinafter provided (ii), may make an order confirming the reduction on such terms and subject to such conditions as it deems fit.

Company to apply to the Court for an order confirming reduction.

When the reduction does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital, the creditors of the Company shall

not, unless the Court otherwise directs, be entitled to object, or required to consent, to the reduction; and it shall not be necessary, before the presentation of any petition under this section, to add, and the Court may, if it thinks fit so to do, dispense with the addition of, the words "and reduced," as mentioned in section fourteen.

In any case that the Court thinks fit so to do, it may require the Company to publish, in such manner as the Court thinks fit, the reasons for the reduction or such other information regarding the same as the Court may think expedient with a view to give proper information to the public in relation to such reduction, and if the Court thinks fit, the cause which led thereto.

The first paragraph of this section follows the wording of Sec. 11 of the English Companies' Act (30 and 31 Vic., c. 131) 1867.

The second and third are taken from Sec. 4 of the English Companies' Act (40 and 41 Vic., c. 26) 1877.

(i) Sec. 77 *post*.

(ii) Sec. 17 *post*.

As to proceedings in England in respect of a petition to reduce capital, see General Order, March 1868, rules 2-20, Buckley 4th ed., 614-618. And for forms of orders the cases cited *ibid.*, 436.

For Form of the petition see Palmer's Company Precedents, 3rd ed., pp. 369, 370.

Creditors
may object
to reduction,
and list of
objecting
creditors to
be settled by
Court.

16. Where a Company proposes to reduce its capital, every creditor of the Company who, at the date fixed by the Court, is entitled to any debt (i) or claim which, if that date were the commencement of the winding-up of the Company, would be admissible in proof against the Company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object.

The Court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible, without requiring an application from any creditor, the names of such creditors and the nature and amount of their debts (i) or claims, and may publish notices fixing a certain day or days within which creditors of the Company who are not entered on the list are to claim to be so entered, or to be excluded from the right of objecting to the proposed reduction.

Provided that, when the reduction does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital, the creditors of the Company shall not, unless the Court otherwise directs, be entitled to object, or required to consent, to the reduction.

The first and second paragraphs follow the wording of Sec. 13 of the English Companies' Act (30 and 31 Vic., c. 131) 1867.

The proviso repeats the provision contained in the earlier portion of the second paragraph of Sec. 15 *supra*, which is taken from Sec. 4 of the Companies' (Act 40 and 41 Vic., c. 26) 1877.

(i) See Sec. 130 *post*, where "debts" are defined.

See Buckley, 4th ed., 487.

As to proceedings in England under this section see General Order, March 1868, rule 4, and rules 6-19, Buckley, 4th ed., 614-618.

17. Where a creditor whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the Court may (if it thinks fit) dispense with such consent on the Company securing the payment of the debt or claim of such creditor by setting apart and appropriating in such manner as the Court may direct a sum of such amount as is hereinafter mentioned (that is to say):—

Court may
dispense
with consent
of creditor
on security
being given
for his debt.

(a) If the full amount of the debt or claim of the creditor is admitted by the Company, or, though not admitted, is such as the Company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated.

(b) If the full amount of the debt or claim of the creditor is not admitted by the Company and is not such as the Company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the Court may, if it thinks fit, inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the Company may be liable in respect thereof, in the same manner as if the Company were being wound up by the Court; and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated.

Sec. 14 of the English Companies' Act (30 and 31 Vic. c. 131), 1867, *verbatim*.

Consent.

In *IN RE The Patent Ventilating Granary Co.*, 12 Ch. D. 254, *Fry, J.*, (declining to follow *IN RE Credit Foncier of England*, L. R. 11 Eq. 350) held that debenture holders, who had not consented in writing to the proposed reduction of the capital of the Company, and had not attended in Chambers to object in pursuance of the ordinary notices and advertisements, and did not appear in Court, could not be taken to have consented to the reduction, but that either a consent brief on their behalf must be produced, or the amount of their debentures must be deposited in Court.

Order and minute to be registered.

18. The Registrar of joint stock Companies, upon the production to him of an order of the Court confirming the reduction of the capital of a Company, and the delivery to him of a copy of the order and of a minute (approved by the Court) showing, with respect to the capital of the Company as altered by the order, the amount of such capital, the number of shares in which it is to be divided, and the amount of each share, and the amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid-up on each share, shall register the order and minute; and, on the registration, the special resolution confirmed by the order so registered shall take effect.

Notice of such registration shall be published in such manner as the Court may direct.

The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to the reduction of capital have been complied with, and that the capital of the Company is such as is stated in the minute.

Sec. 15 of the English Companies' Act (30 and 31 Vic., c. 131), 1867, *verbatim*.

For the Form of Minute see cases cited in Buckley, 4th ed., 488.

Minute to form part of memorandum of association.

19. The minute, when registered, shall be deemed to be substituted for the corresponding part of the memorandum of association of the Company, and shall be of the same validity, and subject to the same alterations, as if it had been originally contained in the memorandum of association; and, subject as in this Act mentioned, no member of the Company, whether past or present, shall be liable in respect of any share to any call or contribution

exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Sec. 16 of the English Companies' Act (30 and 31 Vic., c. 131), 1867, *verbatim*.

20. If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a Company under this Act is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the Company is unable, within the meaning of this Act, to pay to the creditor the amount of such debt or claim, every person who was a member of the Company at the date of the registration of the order and minute relating to the reduction of its capital shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the Company had commenced to be wound up on the day prior to such registration;

Saving of rights of creditors who are ignorant of proceedings.

and, on the Company being wound up, the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it thinks fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up.

Nothing in this section shall affect the rights of the contributories of the Company among themselves.

Sec. 17 of the English Companies' Act (30 and 31 Vic., c. 131), 1867, *verbatim*.

21. A minute, when registered, shall be embodied in every copy of the memorandum of association issued after its registration; and, if any Company makes default in complying with the provisions of this section, it shall incur a penalty not exceeding ten rupees for each copy in respect of which such

Registered minute to be embodied in memorandum of association.

default is made; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Sec. 18 of the English Companies' Act (30 and 31 Vic., c. 131), 1867, substituting "ten rupees" for "one pound."

Penalty on concealment of name of creditor.

22. If any director, manager or officer of the Company wilfully conceals the name of any creditor of the Company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the Company, or if any director or manager of the Company abets, within the meaning of the Indian Penal Code, any such concealment or misrepresentation as aforesaid, every such director, manager or officer shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

Sec. 19 of the English Companies' Act (30 and 31 Vic., c. 131), 1867.

Power to reduce capital by cancellation of unissued shares.

23. Any Company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution (i), as to reduce its capital by cancelling any shares which, at the date of passing such resolution, have not been taken or agreed to be taken by any persons; and the provisions as to reduction of capital contained in the other sections of this Act shall not apply to any reduction made in pursuance of this section.

Sec. 5 of the English Companies' Act (40 and 41 Vic., c. 26), 1877.

(i) See Secs. 76, 77 *post*.

See note to sec. 13 *supra*.

Sub-division of Shares.

Shares may be divided into shares of smaller amount.

24. Any Company limited by shares may, by special resolution (i), so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as, by sub-division of its existing shares or any of them, to divide its capital,

or any part thereof, into shares of smaller amount than is fixed by its memorandum of association (ii):

Provided that in the sub-division of the existing shares, the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

Sec. 21 of the English Companies' Act (30 and 31 Vic., c. 131), 1867, *verbatim*.

(i) S. 77, *post*.

(ii) S. 12, *supra*.

See Buckley, 4th ed., p. 490.

For Forms of Resolutions for the sub-division of shares see Palmer's Company Precedents, p. 296.

25. The statement of the number and amount of the shares into which the capital of the Company is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution; and any Company which makes default in complying with the provisions of this section shall incur a penalty not exceeding twenty rupees for each copy in respect of which such default is made; and every director and manager of the Company who knowingly or wilfully authorizes or permits such default shall incur the like penalty.

Special resolution to be embodied in memorandum of association.

Sec. 22 of the English Companies' Act (30 and 31 Vic., c. 131), 1867 *verbatim*, substituting "twenty rupees" for "one pound."

Associations not for Profit.

26. Where any association which might be formed under this Act as a limited Company proves to the Local Government that it is formed for the purpose of promoting commerce, art, science, charity, or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association in promoting its objects, and to prohibit the payment of any dividend to its members, the Local Government may, by license under the hand of one of its Secretaries, direct such association to be registered with limited liability without the addition of the word "limited" to its

Special provisions as to associations formed for purposes not of gain.

name; and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this Act imposed on limited Companies; with the exceptions that none of the provisions of this Act that require a limited Company to use the word "limited" as any part of its name, or to publish its name, or to send a list of its members, directors, or managers to the Registrar, shall apply to an association so registered (i).

The license by the Local Government may be granted upon such conditions and subject to such regulations as the Local Government thinks fit to impose; and such conditions and regulations shall be binding on the association, and may at the option of the Local Government be inserted in the memorandum and articles of association, or in both or one of such documents.

Sec. 23 of the English Companies' Act (30 and 31 Vic., c. 131), 1867, save that "Local Government" is substituted for the "Board of Trade."

(i) See sections 8, 9 *supra*, and 48, 65, 66, 70, 71, *infra*.

Cf. Act XXI. of 1860 (*an act for the Registration of Literary, Scientific and Charitable Societies*) *post* Appendix.

Calls upon Shares.

Company
may have
some shares
fully paid,
and others
not.

27. Nothing herein contained shall be deemed to prevent any Company under this Act, if authorized by its regulations as originally framed or as altered by special resolution (i), from doing any one or more of the following things, namely:—

(a) making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid, and in the time of payment of such calls;

(b) accepting from any member of the Company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made;

(c) paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others (ii).

Sec. 24 of the English Companies' Act (30 and 31 Vic., c. 131), 1867, *verbatim*.

(i) S. 77, *post*.

(ii) S. 157, *post*.

Clause (c.) Where, by the definition clauses in the articles of association of a Company, the word "capital" was declared to mean the capital for the time being of the Company, and the word "shares" the shares into which the capital was divided; and by another article the directors were empowered to "declare a dividend to be paid to the members in proportion to their shares;" and some of the shares were fully paid up and others not, it was held that it was not competent for the directors to recommend a dividend payable to each shareholder in proportion to the amount paid up upon the shares held by him. *Oakbank Oil Co. v. Crum*, 8 Ap. Ca. 65. Per Lord Blackburn at p. 77, "I can put no meaning whatever upon the words in "proportion to their shares," except that the dividend is to be equal to each member according to the proportion which he has subscribed of the capital money . . . The dividend is to be paid to the members in proportion to their *subscribed* capital." If it is sought to pay dividends in proportion to the amount paid up on each share the resolutions should expressly so declare. Per Lord Fitzgerald, *ibid*. p. 81. See Table A, Art. 72 *post*.

28. Every share in any Company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same has been otherwise determined by a contract duly made in writing and filed with the Registrar of joint-stock Companies at or before the issue of such shares.

Manner in which shares are to be issued and held. X

Sec. 25 of the "English Companies' Act (30 and 31 Vic., c. 131), 1867, *verbatim*.

"The meaning of the section is that you are prohibited from contracting that shares issued shall be paid for otherwise than in cash except by a registered contract," per *Jessel, M. R. IN RE British Farmer's Linseed Co.*, 7 Ch. Div. 533, 535.

See Anderson's Case
7 Ch. Div. 15
1340-11-11
Griffiths v. ...
17.89.169

As to the object of the section generally see Buckley, 4th ed., 492, 493, and as to what are, and what are not, good payments in cash, see Buckley, 4th ed. 493, when the cases are collected. See also Lindley, 4th ed. 1341.

This section applies to a Company generally, and not to its liquidation alone, *Burkinshaw v. Nicolls*, 3 Ap. Ca. 1004.

Operation of Section.

In *IN RE Government Security Fire Insurance Co.*, *White's case*, 12 Ch. Div. 511, the proprietor of a newspaper agreed with a company to insert for them a series of advertisements in his newspaper and to accept payment of his account in fully paid-up shares. He inserted the advertisements and sent in his account to the Company. The Company accepted the account and allotted him fully paid-up shares to the amount thereof. The contract was not registered in pursuance of the Companies' Act, 1867, s. 25, and the Company was afterwards wound up. It was held (reversing the decision of *Hall, V. C.*, 10 Ch. D. 720) that the allottee having originally agreed to accept shares in payment of his account, the Company never came under any liability to pay for the advertisements in cash; and therefore the allottee must be placed on the list of contributories for unpaid shares. Per *James, L. J.*, at p. 515: "It appears to me that what the contract really means is this, 'If you are willing to insert the advertisements for three months, you may do it, but you must not, under any circumstances, apply to us for cash for these advertisements.' It was a bargain, to this effect: 'You shall do the work, and we will give you

White's case.

shares in our Company for it.' It never was intended by either party, according to my view, to be a bargain resulting in a money demand upon a quantum meruit, or upon the usual scale of charges for advertisements."

Spargo's case.

Spargo's case, L. R. 8 Ch. 407, was thus distinguished by the same learned Judge: "All that was said in *Spargo's case* was, that it was not, under the Act of Parliament, absolutely necessary that bank notes or sovereigns should pass and repass from one party to another; that was not a reasonable interpretation to be put on the Act of Parliament, when it speaks of 'payment in cash'; and that payment in cash meant what was payment in point of law, and that what would sustain a plea of payment in point of law was payment in cash within the meaning of the Act. Therefore it must be shown that it would sustain a plea of payment. Here there was nothing to pay. If there could be no money demand, there never was anything to pay. The bargain was that Mr. *White* should accept payment in shares, and must not look for cash." And *Cotton, L. J.*, at p. 519, says: "All that the decisions amount to is this, that when under such circumstances, that is to say, when there are fully paid-up shares in the name of a man put there in pursuance of an agreement, it shall be considered that the Act of Parliament is satisfied if at the time there was money due by the Company to the shareholder which could be satisfied by the calls due on the shares, and that there was an agreement in effect that it should be so satisfied," and *Fothergill's case*, L. R. 8 Ch. 270 was followed.

Per Lord Blackburn (*Burkinshaw v. Nicolls*, 3 Ap. Ca. 1025) "The 25th section of the Act of Parliament in question, though not worded perhaps quite as I think it might have been worded, clearly means no more than this: that no contract by which shares shall be considered as duly paid up when they are not in fact paid up, shall be valid unless it be registered; and that when there is no such registered contract, the shares are to be payable in cash. More than that I do not think it means."

"Contract."

As to what constitutes a "contract" under this section, see Buckley, 4th ed., 497.

On the other hand, crediting to a director a sum of money equal to three-fourths of the amount paid up by him upon his shares in consideration of his giving up certain benefits was held equal to a cash payment by him within the meaning of the section in question. IN RE *Regent United Service Stores* e. p. *Bentley*, 12 Ch. D. 850. See also IN RE *Barrow-in-Furness Co.*, 14 Ch. Div. 403, and IN RE *Stapleford Colliery Company*, *Barrow's case*, 14 Ch. Div. 432, which are set out and discussed at pp. 494, 495, of Buckley, 4th ed.

But, under circumstances such as those stated in *White's case* *supra*, the allottee has a right to prove for damages to the amount of the calls made or which might be made upon him. See IN RE *Government Security Fire Insurance Co.*, *Mudford's claim*, 14 Ch. D. 634, which was followed in *Great Australian Gold Mining Co.*, ex-parte *Appleyard*, 18 Ch. D. 587, *sed vide* Buckley, 4th ed., pp. 113, 499, as to whether these last two cases are consistent with *Houldsworth v. Glasgow Bank*, 5 App. Ca. 317.

"Issue."

"At or before the issue of such shares." see RE *Ambrose Lake Tin and Copper Co.*, *Clarke's case*, 8 Ch. Div. 635, from which it appears that an allotment of shares does not constitute the "issuing" of the shares, for which something more than the mere allotment is necessary. "The Act of Parliament," says Cockburn, L. C. J., at p. 636, "imposes no condition upon allotment such as it imposes on the issue of shares, and I think that, inasmuch as the term 'issue' is used, it must be taken as meaning something distinct from allotment, and as importing that some subsequent act has been done whereby the title of the allottee becomes complete, either by the holder of the shares receiving some certificate, or of being placed on the register of shareholders, or by some other step by which the title derived from the allotment may be made entire and

complete." In this case, *Bush's case*, L. R. 9 Ch. 554, was followed, and *Blyth's case*, 4 Ch. Div. 240, distinguished.

"The question is whether the shareholder has or not been put completely in possession of his share, and this may be so, although some formal act may not have been completed." Buckley, 4th ed., 499.

In *IN RE Gold Company*, 11 Ch. Div. 701, the registration of the contract in question in that case and of the subsequent allotment of shares were expressly effected to escape this provision. See this case more fully referred to, *post*.

It is to be observed that Sec. 25 of the Companies' Act, 1867, has no application in a question in a winding-up of liability to take shares which were never allotted by the Company. In *IN RE Victoria Mansions, Norton's case*, 50 L. J. Ch. D. 454. Per *Fry, J.*, *ibid.* "Sec. 25 only applies to shares when issued. In this case the shares were not issued." Section only applies to shares which have been "issued."

And original shares that have been forfeited by the Company for non-payment of calls can be resold by the directors for less than the nominal value without a contract registered under this section. Such shares are not "issued" by the Company. Per *Bacon, V. C.*, in *IN RE Exchange Banking Co., Ramwell's case*, 50 L. J. Ch. D. 827.

A limited Company may, where so authorized by its articles of association, issue shares at a discount under a contract duly registered under the section. In *IN RE Plaskynaston Tube Co.*, 23 Ch. D. 543; and *Ince Hall Rolling Co.*, *ibid.* 545, note. Issued of shares may be registered at discount.

Transfer of Shares.

29. A Company shall, on the application of the transferor of any share or interest in the Company, enter in its register of members the name of the transferee of such share or interest in the same manner and subject to the same conditions as if the application for such entry were made by the transferee. Transfer may be registered at request of transferor.

Sec. 26, English Companies' Act (30 and 31 Vic., c. 131), 1867, *verbatim*.

Cf. ss. 44 and 58 *post*.

See *Bush's case*, L. R. 6 Ch. 246, and L. R. 6 H. L. 37; which shows that a transferor will not necessarily be liable for omissions by the directors in carrying out the formalities of the transfer.

See further as to the effect of neglecting to see to the transfer of shares under Act XIX. of 1857. In *IN RE The East Indian Trading and Banking Co.*, *Jamadas Savaklal's case*, 3 Bom. H. C. O. C. J. 113, and *IN RE Mercantile Credit and Financial Association: ex-parte M. R. Dalvi*, 3 Bom. H. C. O. C. J. 125, and see these cases cited fully *post*.

Semble, this section would more properly immediately precede sec. 58 *post*.

Share-warrants to Bearer.

30. In the case of a Company limited by shares, the Company, if authorized so to do by its regulations as originally framed or as altered by special resolution (i), and subject to the provisions of such regulations, may, with respect to any share which is fully paid up, or with respect to stock, issue under Warrant of limited shares fully paid up may be issued in name of bearer.

Coupons.

their common seal a warrant (hereinafter referred to as a share-warrant) stating that the bearer thereof is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on such shares or stock.

Sec. 27, English Companies' Act (30 and 31 Vic., c. 131), 1867, *verbatim*.

(i) See sec. 77, *post*.

Cf. Secs. 34 and 47 *post*.

IN RE *National Funds Assurance Co.*, 10 Ch. D. 118, it was decided that payment out of capital by directors of the Company of the interest on share-warrants issued under sec. 27 of the English Act was *ultra vires* and a breach of trust. See this case further referred to, *post*.

Effect of share-warrant.

31. A share-warrant shall entitle the bearer thereof to the shares or stock specified therein; and such shares or stock may be transferred by the delivery of the share-warrant.

Sec. 28 of the English Companies' Act (30 and 31 Vic., c. 131), 1867, *verbatim*.

Re-registration of bearer of a share-warrant in the register.

32. The bearer of a share-warrant shall, subject to the regulations of the Company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members; and the Company shall be responsible for any loss incurred by any person by reason of the Company entering in its register of members the name of any bearer of a share-warrant in respect of the shares or stock specified therein without the share-warrant being surrendered and cancelled.

Sec. 29 of the English Companies' Act (30 and 31 Vic., c. 131), 1867, *verbatim*.

Regulations of the Company may make the bearer of a share-warrant a member.

33. The bearer of a share-warrant may, if the regulations of the Company so provide, be deemed to be a member (i) of the Company within the meaning of this Act, either to the full extent or for such purposes as may be prescribed by the regulations:

Provided that the bearer of a share-warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the Company in cases where such a qualification is prescribed by the regulations of the Company.

Sec. 30 of the English Companies' Act (30 and 31 Vic., c. 131), 1867, *verbatim*.

(i) See Sec. 45 *post*, after which this section would more appropriately have come.

See note to this section, Buckley, 4th ed., 501.

34. On the issue of a share-warrant in respect of any share or stock, the Company shall strike out of its register of members the name of the member then entered therein as holding such share or stock, as if he had ceased to be a member, and shall enter in the register the following particulars :—

Entries in register where share-warrant issued.

(a) the fact of the issue of the warrant;

(b) a statement of the shares or stock included in the warrant, distinguishing each share by its number;

(c) the date of the issue of the warrant.

Sec. 31 of the English Companies' Act (30 and 31 Vic., c. 131), 1867, *verbatim*, down to the end of clause (c), after which the above section in the English Act contains the clause which follows clause (c) in Sec. 47, *post*.

In the English Act of 1867 there follows Sec. 32 which corresponds with Sec. 49 of this Act. See *post*.

35. There shall be charged on every share-warrant a stamp-duty of an amount equal to three times the amount of the *ad valorem* stamp-duty which would be chargeable on an instrument transferring the shares or stock specified in the warrant if the consideration for the transfer were the nominal value of such shares or stock.

Stamps on share-warrants.

If a share-warrant is issued without being duly stamped, the Company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the Company, shall forfeit the sum of five hundred rupees.

Penalty for issuing share-warrant not duly stamped.

Sec. 33 of the English Companies' Act (30 and 31 Vic., c. 131), 1867.

The penalty is taken *verbatim* from 33 and 34 Vic., c. 97, s. 127 (The Stamp Act, 1870), substituting "five hundred rupees" for "fifty pounds."

In the English Act of 1867 there follow three sections which enact penalties on persons committing the forgeries specified in Sec. 34 of that Act—on persons falsely personating the owners of shares (s. 35), and on persons engraving plates, &c. (s. 36).

In India these provisions would be superfluous in this Act, as the offences referred to are dealt with in the Penal Code (Act XLV. of 1860), chap. XVII. (secs. 415, 416,) and Chap. XVIII.

Then follows in the English Companies' Act of 1867. Sec. 37, which corresponds with Sec. 67 *post*, and sec. 33, which corresponds with sec. 88 *post*.

Change of Name.

Power of
Companies
to change
name.

36. Any Company under this Act, with the sanction of a special resolution of the Company passed in manner hereinafter mentioned (i), and with the approval of the Local Government testified in writing under the hand of one of the Secretaries to such Government, may change its name (ii); and, upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation, altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted or to be instituted by or against the Company; and any legal proceedings may be continued or commenced against the Company by its new name that might have been continued or commenced against the Company by its former name.

Explanation.—The issue of the certificate of incorporation is necessary to complete the change of name.

Sec. 13 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting the words "Board of Trade" for "Local Government," and its "Secretaries or assistant secretaries" for "one of the Secretaries to such Government."

Sec. 13 of the Indian Companies' Act X. of 1866, *verbatim*, except the Explanation, which is there omitted.

(i) See Sec. 77 *post*.

(ii) See Sec. 43 *post*.

As to the Explanation see *Shackleford, Ford & Co. v. Dangerfield*, L. R. 3 C. P. 407, and as to the effect of a certificate of incorporation, see Sec. 41 *post*.

Articles of Association (i).

Regulations
to be pre-
scribed by
articles of
association.

37. The memorandum of association may, in the case of a Company limited by shares, and shall, in the case of a Company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such

regulations for the Company as the subscribers to the memorandum of association deem expedient.

The articles shall be expressed in separate paragraphs, numbered consecutively. They may adopt all or any of the provisions contained in the table marked A in the first schedule hereto. They shall, in the case of a Company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the Company proposes to be registered (ii), and in the case of a Company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members (iii); with which the Company purposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration (iv).

In a Company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share, at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes (v).

Sec. 14 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and Sec. 14 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See Sec. 76 *post*, as to power to alter regulations by special regulation.

(ii) See Sched. II., Forms C and D.

(iii) As to increase of number of members, see sec. 57 *post*.

(iv) See Sched. II., Form B.

(v) Cf. Sec. 8 *supra*, (f) and (g).

Cf. also Sec. 7 of Act XIX. of 1857.

It seems that the words "memorandum of association" in the last paragraph of this section should be "articles of association." See Forms C and D where the column showing the number of shares taken by each subscriber is put in the articles of association. See Mr. Buckley's note to ss. 9 and 14 of the English Act 1862 (4th ed., pp. 9 and 16.)

See Sec. 80 *post*, as to annexing copies of special resolutions (passed under Sec. 76 *post*) to or embodying them in articles of association.

38. In the case of a Company limited by shares, if the memorandum of association is not accompanied by articles of association, or, in so far as the articles do not exclude or modify the regulations contained in the table marked A in the first schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the Company, in the same manner

Application
of table A.

and to the same extent as if they had been inserted in articles of association and the articles had been duly registered.

Sec. 15 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and Sec. 15 of the Indian Companies' Act X. of 1866, *verbatim*.

See Sec. 95 *post* as to the power of the Governor-General in Council to alter the forms annexed to this Act.

Cf. Act XIX. of 1857, s. 7.

Signature
and effect of
articles of
association.

39. The articles of association shall be printed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least.

When registered, they shall bind the Company and the members thereof to the same extent as if each member had subscribed his name thereto and as if such articles contained a contract on the part of himself, his heirs, executors and administrators to conform to all the regulations contained in such articles subject to the provisions of this Act (i).

All monies payable by any member to the Company in pursuance of the conditions and regulations of the Company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the Company (ii).

Sec. 16 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and Sec. 16 of the Indian Companies' Act X. of 1866, both of which, however, commenced as follows:—"The articles of association shall be printed, they shall bear the same stamp as if they were contained in a deed," &c. The section in the English Act concluded as follows—"and in England and Ireland to be in the nature of a specialty debt."

(i) See sec. 11 *supra*, and note thereto.

(ii) See sec. 125 *post*, and Sched I., Table A, arts. 4-7 *post*.

Cf. also Act XIX. of 1857, ss. 8, 9.

In England a longer period of limitation, namely twenty years, (3 and 4 Will. IV., c. 42, s. 3,) was fixed for suits for specialty than for simple debts (the period for suits upon which is six years). See *The Cork and Bandon Railway Co. v. Goode*, 13 C. B. 826; 22 L. J. C. P. 198. A call, however, founded on a Colonial Act, was held to constitute merely a simple contract debt in *Welland Railway Co. v. Blake*, 30 L. J. Ex. 161.

In India, where there is no distinction between specialty and simple debts, the period of limitation fixed for recovery of calls is three years from the time when the call is payable, Act XV. of 1877, Sched. II.,

Div. I., No. 112, and for other monies payable also three years. Sched. II., Part VI. of Act XV. of 1877.

It follows therefore that a liquidator in India is not entitled to priority over other simple contract creditors as in England; he was held to be in respect of calls made since the winding-up in *Buck v. Robson* L. R. 10 Eq. 629, 631, 634. See *Asiatic Banking Corporation v. Amador Viegas*, 8 Bom. H. C. 20. And now in England the distinction between specialty and simple contract debts of deceased persons is abolished by 32 and 33 Vic. 46; but that Act does not prejudice or affect any lien, charge or other security which any creditor may hold or be entitled to for payment of his debt.

General Provisions.

40. The memorandum of association, and the articles of association, if any, shall be delivered to the Registrar of joint stock Companies hereinafter mentioned (i), who shall retain and register the same. [It is not his duty to require evidence as to whether the several subscribers to a memorandum of association so delivered are competent to contract.]

Registration of memorandum of association and articles of association with fees as in table B.

There shall be paid to the Registrar by a Company having a capital divided into shares, in respect of the several matters mentioned in the table marked B in the first schedule hereto, the several fees therein specified, or such smaller fees as the Governor-General in Council may from time to time direct (ii), and by a Company not having a capital divided into shares, in respect of the several matters mentioned in the table marked C in the first schedule hereto, the several fees therein specified, or such smaller fees as the Governor-General in Council may from time to time direct.

All fees paid to the said Registrar in pursuance of this Act shall be accounted for to Government.

Sec. 17 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; excluding the words put in brackets above and substituting "Board of Trade" for "Governor-General in Council" in the second paragraph. The section in the English Act, in place of the third paragraph, provides that "all fees paid to the said Registrar in pursuance of this Act shall be paid in to the receipt of Her Majesty's Exchequer, and be carried to the account of the Consolidated Fund of United Kingdom of Great Britain and Ireland."

Sec. 17 of the Indian Companies' Act, 1866, *verbatim*, save the sentence in brackets above.

(i) See sec. 220, *post*.

(ii) See sec. 95, *post*.

Cf. also Act XIX. of 1857, s. 10.

As to the words in brackets inserted in the present Act, see *IN RE Nassau Phosphate Co.*, 2 Ch. D. 610; 614 (*per Hall, V. C.*)

Effect of registration.

41. Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this Act or by the desire of the parties to be registered, the Registrar shall certify under his hand that the Company is incorporated, and in the case of a limited Company that the Company is limited: the subscribers of the memorandum of association, together with such other persons as may from time to time become members (i) of the Company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated Company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the Company, in the event of the same being wound up, as is hereinafter mentioned (ii).

A certificate of the incorporation of any Company given by the Registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with (iii).

Sec. 18 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and Sec. 18 of the Indian Companies' Act, 1866, *verbatim*, save that in the English Act the words "with power to hold lands" are inserted after "and a common seal."

In India a Corporation may freely hold lands. Whitley Stokes on Indian Companies' Act, 1866, p. 79; see also Act IV. of 1837.

(i) See Sec. 45 *post*.

(ii) See Sec. 61 *post*.

(iii) Cf. Sec. 235 and 236 *post*. Cf. also Act XIX. of 1857, Sec. 11.

"I think," said Lord Chelmsford in *Oakes v Turquand*, L. R. 2 H. L. at p. 354, "the certificate prevents all recurrence to prior matters essential to registration, amongst which is the subscription of a memorandum of association by seven persons, and that it is conclusive in this case, that all previous requisites had been complied with."

See also *Glover v. Giles*, 18 Ch. D. 173.

Incorporation or registration may be proved by other evidence as well as by the Registrar's certificate, see *Mostyn v. Calcott Mining Co.*, 1 Fos. and Fin. 534; *Agriculturist Cattle Insurance Co v. Fitzgerald*, 16 Q. B. 432; Cf. *R. v. Frankland*, 9 Jur. N. S. 390; Taylor on Evidence, 6th ed., p. 418; and *IN RE Alliance Financial Association, Blaney's case*, 3 Bom. H. C. Rep. O. C. J. 106.

But *quære* whether the certificate is conclusive on the question whether or not the provisions of the Act are applicable to the Company at all, see Buckley, 4th ed., 18, 19. Shelford on Companies, 2nd ed., 186, 187, and Lindley, 4th ed., 164, and *Re Northumberland and Durham District Banking Co.*, 2 De G. and J. 357, 371; 27 L. J. Ch. 354.

42. A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of such sum, not exceeding one rupee, as may be prescribed by the Company for each copy; and if any Company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member in pursuance of this section, the Company so making default shall for each such offence incur a penalty not exceeding twenty rupees (i).

Copies of memorandum and articles to be given to members.

Sec. 19 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, *verbatim*, substituting "rupee" for "shilling" and "twenty rupees" for "one pound" in that section. Sec. 19 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) For cognizance of offences, &c., see sec. 252 *post*.

Cf. Act XIX. of 1857 s. 25.

43. No Company shall be registered under a name identical with that by which a subsisting Company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting Company is in the course of being dissolved, and testifies its consent in such manner as the Registrar requires.

Prohibition against identity of names in Companies.

If any Company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting Company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned Company may, with the sanction of the Registrar, change its name (i); and upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted or to be instituted by or against the Company, and any legal proceedings may be continued or commenced against the Company by

its new name that might have been continued or commenced against the Company by its former name.

Sec. 20 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and Sec. 20 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See sec. 36 *supra*.

Cf. Act XIX. of 1857 s. 4.

There is nothing in the Act to affect the right of a Company registered under a particular name to an injunction restraining another Company which, notwithstanding the prohibition of the above section against identity of names, has been registered under an identical or similar name, from carrying on its business under that name, if it is proved that that name is calculated to deceive; the principles applicable to individuals trading under identical or similar names applying equally to Companies. *Merchant Banking Co. of London v. Merchants' Joint Stock Bank*, 9 Ch. D. 560, where *Jessel, M. R.*, however refused to grant an injunction on the ground that the name of the defendants' Company was not sufficiently similar to that of the plaintiffs'.

In *Hendricks v. Montagu*, 17 Ch. Div. 638, it was held that a Company not registered under the Companies' Act, 1862, could restrain the registration under that Act of a projected new company, which was intended to carry on the same business as the unregistered Company (*i.e.* Life Assurance), and to bear a name (*Universe Life Assurance Association*) so similar to that of the unregistered Company (*Universal Life Assurance Society*) as to be calculated to deceive the public. "There may be a statutory right to register, provided the person who is doing it is not in doing it violating some other right, or offending against the law," per *Cotton, L. J.*, p. 652.

And see *Buckley*, 4th ed., 20, 21.

In the English Act of 1862 here follows a section which prohibits Companies formed for the purpose of promoting art, science, religion, charity or any other like object, not involving the acquisition of gain by the Company or by the individual members thereof, from holding more than two acres of land without the sanction of the Board of Trade, &c. There is no such restriction in India. See the Act for the registration of Literary, Scientific and Charitable Societies, XXI. of 1860, sec. 5 *post*, Appendix.

PART II.

DISTRIBUTION OF CAPITAL AND LIABILITY OF MEMBERS OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Distribution of Capital.

Nature of
interest in
Company.

44. The shares or other interest of any member in a Company under this Act shall be moveable property capable of being transferred in manner provided by the regulations of the Company (i), and shall not be of the nature of real estate or immoveable property; and each share shall, in the case of a

Company having a capital divided into shares, be distinguished by its appropriate number.

Sec. 22 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting "moveable property" for "personal estate;" and adding "or immoveable property" after "real estate." And sec. 21 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See Sched. I., Table A, (8)—(16), and sec. 223 *post*, as to certain other Companies.

Cf. Act XIX. of 1857, s. 13.

As to the manner in which shares may be transferred, see Table A, Art. 8 *post*, and *In re East Indian Trading and Banking Co., Jamnadas Savaklal's case*, 3 Bom. H. C. O. C. J. 113, there referred to.

The following cases may be referred to as to what constitutes a readiness and willingness to deliver shares :—

Where the substance of the contract between plaintiffs (vendors) and defendant (vendee) was to put the defendant into possession as legal owner of shares, numbered according to the contract, before the date fixed for the payment of the price by the vendee, it was held no objection that the plaintiffs were not beneficial owners of the shares. The plaintiffs on the day named for the completion of the contract tendered to the defendant three share allotment and receipt papers in the Company, numbered as in the agreement, and with each a transfer paper and an application paper signed by the original allottee in blank, which the defendant received, and, after taking a note of the contents of each, returned them, and refused to pay the price fixed.

What constitutes a readiness and willingness to deliver shares.

It was proved that these allotment papers, including a receipt for the first deposit call were currently sold, and passed, under the name of shares in the Bombay market; and according to the usage of the Company, on production at their office of the allotment paper and transfer and application papers which were handed to the defendant, a transfer of the shares of the allottee to the defendant would have been made as a matter of course. *Held*, that the plaintiffs having in their hands the allotment and receipt papers, and transfer and application paper executed in blank by the original allottee, could have had the shares to which the original allottee was entitled, transferred to the defendant; and that the defendant, having refused to execute the transfer, could not rely on the objection that the consent of the directors to the transfer had not been obtained; and the plaintiffs were therefore entitled to damages for defendant's breach of contract. *The Imperial Banking and Trading Co. v. Atmaram Madhavji*, 2 Bom. H. C. O. C. J. 246.

Semble, the seller should be ready to make such a delivery of the shares, and place the purchaser in such a position with reference to them as would enable the latter himself to go into the market and become a seller, and to compel a purchaser from himself specifically to perform his contract. See *Jivraj Meghji v. Poulton*, 2 Bom. H. C. O. C. J. 253.

But it is enough if the seller is able and willing to make a valid transfer to the purchaser on the day fixed. The seller is not bound to make any tender of the shares or transfer deed when there is no place fixed in the contract for making a tender. *The Imperial Banking and Trading Co. v. Pranjiwandas Harjiwandas*, 2 Bom. H. C. O. C. J. 258.

In a contract for sale of shares to be delivered on or before a future day, it is enough if the seller is in a position to deliver the shares on that day, or if called on to complete before that day, when so called on: it is not necessary for him to show that he was in possession of the shares before those dates. *Maganbhai Hemchand v. Maucherbhai Kallianchand*, 3 Bom. H. C. O. C. J. 79.

See also *Lall M. Mullick v. Peary Chand Mitter*, 1 Ind. Jur. N. S. 383.

Contract to sell
shares.

A share in a Company signifies a definite portion of its capital, and a contract to sell a share is a contract to sell and transfer that right. By using the word "share," the parties to a contract do not necessarily mean the right of a person whose name is then actually on the register of shareholders, and a contract to deliver shares in a public Company is sufficiently performed when the contracting party places the other in the position of being the legal owner of them. Where therefore the seller tendered to the purchaser share "receipts" (such receipts being received in the market as shares, until certificates were ready) and applications for transfer signed by himself, on presentation of which to the Company the purchaser would have been registered as transferee of the shares, it was held, on an issue of readiness and willingness that the seller was entitled to succeed in a suit for specific performance of the agreement, though he might, if he had applied earlier, have obtained share certificates in exchange for the "receipts" *Parbhudas Pranjivandas v. Ramlal Bhagirath*, 3 Bom. H. C. O. C. J. 69.

When a contract has been made for the sale of Bank shares deposited with the Bank as security for an advance, the vendor is not bound to disclose the fact of the deposit to the purchaser when there can be no reason to anticipate such a depreciation in value of the shares as would entitle the Bank to refuse to transfer. *Narayan Succaram v. Bhawoo Dajee*, 1 Ind. Jur. N. S. 144.

And as to what circumstances will entitle the depositary of shares to have them registered in the books of the Company and to be paid dividends upon them although the depositor of the shares is indebted to the Company, see *Pietsch v. Eastern Bengal Indigo Co.* 1 Ind. Jur. N. S. 278.

When seller
need not prove
readiness and
willingness to
deliver.

If before the date fixed for the delivery of the shares the purchaser gives notice to the seller that he will not accept them, the seller is exonerated from giving proof of readiness and willingness to deliver the shares, *Dayabhai Dipchand v. Manicklal Vrijibhukan*, 8 Bom. H. C. A. C. J., 123. So also if the purchaser has absconded and closed his place of business, having no agent or other person to represent him, the seller need not have made a tender of the shares. *Dayabhai Dipchand v. Dullabram Dayaram*, 8 Bom. H. C. A. C. J., 133.

Whether a transfer of shares in a Company can or cannot be made without the production of the certificates of the shares, is a matter entirely within the discretion of the directors, per *Cairns, L. C.*, in *Shropshire Union Railway and Canal Co. v. The Queen*, L. R. 7., H. L. 496.

As to the cases relating to the question of the shareholder's right to effect a transfer of his shares, and the rules to be deduced therefrom, see Buckley, 4th ed., p. 22 *et seq.*, and Lindley, 4th ed., 1400-1415, and see *IN RE Taurine Co.*, 25 Ch. Div. 118, when it was held that the fact that the transferors knew that the Company was on the eve of being wound up voluntarily did not take away their power of transferring their shares.

See further sec. 124, *post*, and note thereto.

"Shares in Companies governed by modern statutes are not mere *choses in action*; the legal, as well as the equitable, interest in them is capable of transfer; and where the legal ownership in them, or even only the legal right to be registered, is acquired by a *bond fide* purchaser for value without notice of a prior equitable interest, the title of such purchaser cannot be impeached in equity any more than at law." Lindley on Partnership, 4th ed., p. 663, and see *Briggs v. Massey*, 42 L. T. 49.

And see and consider *France v. Clark*, 22 Ch. D. 830, affirmed 26 Ch. Div. 257, as to the rights of a pledgee of shares, *post* p. 40.

A "committee" consisting of one person only can approve of a transfer of shares. *IN RE Taurine Co.*, 25 Ch. Div. 118.

45. The subscribers of the memorandum of association of any Company under this Act shall be deemed to have agreed to become members of the Company whose memorandum they have subscribed, and upon the registration of the Company shall be entered as members on the register of members hereinafter mentioned (i); and every other person who has agreed with a Company under this Act to become a member of such Company, and whose name is entered on the register of members, shall be deemed to be a member of the Company.

Definition of
"member."

Soc. 23 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 22 of the Indian Companies' Act X. of 1866 *verbatim*.

(i) See sec. 47 *post*, and note thereto.

Cf. also Act XIX. of 1857, s. 17.

N. B. The register is not conclusive, see sec. 60 *post*.

The memorandum of association referred to in this section is the *registered* memorandum. See *The Guzerat Spinning and Weaving Company v. Girdharlal Dalpatram*, I. L. R. 5 Bom. 425, adopting the view of the section taken in *Anandji Visram v. Nariad S. and W. Co.*, I. L. R. 1 Bom., at p. 328. The agreement must be *with the Company* as such, see *The Guzerat Co. v. Girdharlal Dalpatram*, *ubi supra*, I. L. R.

Memorandum
of Association
the registered
memorandum.

Quere, whether it is enough to constitute a person a member of a Company under the earlier part of this section, to subscribe a true copy of the memorandum of association. See *Guzerat Co. v. Girdharlal Dalpatram*, *ubi supra*, where, however, it was not necessary to decide this point, inasmuch as what the defendant had signed was not even a true copy of the memorandum of association, and see Buckley, 4th ed., p. 45.

Signature of
duplicate of
memorandum.

By sec. 18 of Act XIX. of 1857, it was provided that the transferor of shares should be deemed the holder until the name of the transferee should be entered in the register book; consequently a sale by the allottee of shares in a Company registered under that Act, who had signed the memorandum and articles of association, to a director under circumstances which disclosed laches on the part of the vendor in complying with that section was held of no effect; as although directors may by their conduct preclude themselves from objecting to the completeness of a transfer, yet the act of an individual director acting in his private capacity could not and ought not to bind the Board, unless it had ratified or authorized his conduct. IN RE *The East Indian Trading and Banking Company*; *Jamnadas Savakla's case*, 3 Bom. H. C. O. C. J., 113. Compare with this case IN RE *Dronfield Silkstone Coal Co.*, 17 Ch. Div. 76, and IN RE *Mercantile Credit and Financial Association*, *ex-parte Dalvi*, 3 Bom. H. C. O. C. J. 125.

Laches of
vendor in
effecting
transfer under
Act XIX. of
1857.

"Those persons only are liable who have *agreed* to become shareholders, and whose names appear on the register; and even this is not strictly accurate, because a man may be a shareholder and be liable who has simply agreed to become a shareholder, although his name is not *de facto* on the register," Buckley, 4th ed., 40.

As to rectifying the register before a winding-up see sec. 58 *post*; and after a winding-up sec. 147 *post*.

As to subscribers to the memorandum see Buckley, 4th ed., 41-46.

As to the mode of transferring shares under this Act, see articles (8)—(11) of Table A (First Schedule), *post*.

A transfer may be registered at the request of the transferor *sec.* 29 *supra*, and as to transfer by personal representative *see sec.* 46 *post*.

A request to the directors of a Company by two subscribers of the memorandum to cancel their shares, although acceded to and entries to that effect made in the Company's books, was held not to exonerate those subscribers from liability as contributories. *IN RE Esparto Trading Co.*, 12 Ch. Div. 191. (*See post*, *sec.* 124.)

Agreement to
become a
member.

1. Directors acting under articles which contain a director's qualification clause. By Art. 53 of Table A *post* (First Schedule), subscribers of the memorandum of association are to be deemed directors until directors are appointed.

*RE Esparto
Trading Co.*

In *IN RE Esparto Trading Co.*, *ubi supra*, one of the above-mentioned subscribers to the memorandum who was entered in the register for four shares was by one of the articles named a director and was appointed a managing director. By another article it was provided that every director should "at the time of his appointment" and thenceforth while in office hold four shares, and if he should cease to do so, his office should become vacant. The subscriber in question acted as director for about two months in 1866. In 1867 his shares were cancelled at his request, and entries made in the Company's books to that effect. In 1876 the Company was ordered to be wound up, and the executors of the subscriber, who had died long previously, were placed on the list of contributories in respect of his four shares.

"The words," says Hall, V. C., at p. 202, "are not the same as in the cases in which the words of the qualification clause have been such that the holding of shares previously to the appointment was essential, *i. e.* a condition precedent to the appointment, and *Hamley's case* (5 Ch. Div. 705) and *Jenner's case* (7 Ch. Div. 132) are cases of that kind. In those cases the articles of association provided that no person should be qualified to be a director who was not a holder of shares. So in *Stock's case* (4 D. J. and S. 426) the words were, no person 'shall be eligible' as a director of the Company, unless he shall hold, in his own right, fifty shares at least. In the present case the words 'shall at the time of his appointment' exclude, as regards the directors appointed by the article, of whom *Goddard* (the subscriber of the memorandum) was one, a subsequent acquisition of shares, which in cases where the holding of the shares was not, upon the construction of the articles, a condition precedent to appointment, has been held to be sufficient. In *Forbes' case* (L. R. 8 Ch. 768, 770) there was in the articles of association a clause that any member holding not less than fifty shares 'shall be eligible' as a director, and then followed a clause naming certain persons, and any other qualified persons named by them, directors until the first meeting. It was held, as in *Stock's case*, that the qualification was inapplicable to the named directors: 'shall be eligible' excluded from the qualification clause persons who had not to be 'elected.' Ordinarily a qualification clause has been held to apply to directors named in the articles. This is a question of construction. In *Forbes' case* (L. R. 19 Eq. 353) the articles provided that the qualification of a director should be fifty shares. This was held by the Master of the Rolls to apply to directors named in the Act of Parliament.

"The decisions in *Kincaid's case* (L. R. 11 Eq. 192), and *Portal v. Emmens* (1 C. P. D. 201), and *Miller's case* (3 Ch. D. 661, 5 Ch. Div. 70), are similar.

"In this case I think that the words 'shall at the time of his appointment' do not exclude the directors named in the articles. *Goddard* did, I consider, hold from the date of his appointment four shares, that

"is, the one he signed the memorandum of association for and three others
 "... I think directly *Goddard* was appointed he became a director and
 "holder of four shares."

See further *IN RE Hampshire Co-operative Milk Co., Purcell's case*, 29 W. R. 170.

But where no qualification is necessary, the mere fact of acting as a director of a Company, and of attendance at meetings in that character is not enough to fix a man with knowledge that his name has been entered on the share register, and with consequent liability, if he neither applied for shares nor received any notice of allotment. Nor is there any presumption of law that a director knows the contents of the books of the Company. *IN RE Wincham Ship-building, Boiler, and Salt Co., Hallmark's case*, 9 Ch. Div. 329.

Moreover beneficial ownership was held not necessary for a qualification where the articles of association provided that no person should be eligible as a director unless he held "as registered member in his own right capital of the nominal value of £500 at least;" and therefore a registered holder of the required capital was properly eligible, though he had transferred his shares to another. *Pulbrook v. Richmond Consolidated Mining Co.*, 9 Ch. Div. 610.

See Buckley, 4th ed., 46, for the principle on which all the cases on director's qualification may be reconciled.

The latest case on this subject is *IN RE Columbia Chemical Factory Manure and Phosphate Works, Hewitt's case* and *Brett's case*, 25 Ch. Div. 283. In that case the Company was registered in June 1879. *Brett* and *Hewitt* signed the memorandum of association as subscribers for one share each; and by the articles they were named as original directors, and it was provided that the qualification of a director should be fifty shares. They attended meetings of the directors, but no shares were allotted to them, nor did their names appear on the register for any shares except those for which they had signed the memorandum. In September *Brett* resigned his office, but *Hewitt* continued a director. No business was ever done by the Company, and in November a resolution was passed to wind up the Company. Upon an application by the liquidator to place *Brett* and *Hewitt* upon the list of contributories for fifty shares each it was held by the Court of Appeal (affirming the decision of *Kay J.*) that assuming that the contract entered into by *Brett* and *Hewitt* to obtain a qualification amounted to an agreement to take fifty shares within the 23rd section of the *Companies' Act*, 1862, they were entitled to a reasonable time for performing the agreement, and that under the circumstances such reasonable time had not elapsed at the commencement of the winding-up of the Company; and consequently they could not be held liable as contributories for the fifty shares. The Court, however, not being agreed upon the question, declined to express an opinion whether the contract amounted to an agreement to take the fifty shares within the 23rd section.

All the cases bearing upon the question of directors' qualification will be found collected in this case, and are thus summed up by *Kay, J.*, at p. 286.

"The cases on this subject seem to be divisible into the following classes:—

- (1). When under similar articles a director has simply accepted the office, and then it is held he is not a contributory.
- (2). When, after accepting, and while he is a director, shares have been registered in his name, and then he is presumed to know what was done, and to have accepted such shares.
- (3). Where the articles make the possession of the qualification of shares a condition precedent, and then it is held that the director may have been improperly appointed, and he is not a contributory.

- (4). There is a separate class of cases in which, by virtue of the special terms of the articles or of the Company's charter, a director on accepting the office becomes *ipso facto* a shareholder."

Per *Brett, M. R.* at pp. 295, 296. "But it will be found that when the directors have been held liable, either the shares had been entered in the register or treated as allotted in the other books of the Company..... In the present case, as the directors named in the articles signed the memorandum for one share each only, it could not have been intended that they should not act before they had the qualification. If it had been so they would have been required to sign the memorandum for the amount of shares necessary to give the qualification. In the present case, the Company, though formally constituted, never had any business existence."

Agreement.

2. Persons other than directors.—As to what is an "agreement," see Sec. 2 of the Indian Contract Act IX. of 1872 (*cf. e.*), see also Chap. I. of that Act with reference to the communication, acceptance and revocation of proposals; and see and consider the following cases:—*Byrne & Co. v. Leon Van Tienhoven & Co.*, 5 C. P. D. 344; 49 L. J. C. P. [N. S.] 316; which was followed in *Stevenson v. Maclean*, 5 Q. B. D. 346; In *The Household Fire, &c., Accident Insurance Co. v. Grant*, 4 Ex. Div. 216, it was held (*Bramwell, L. J., diss.*) that the defendant to whom shares had been allotted on his application was a shareholder, although the letter posted and addressed to him containing notice of allotment was never received by him, and *The British and American Telegraph Co. v. Colson* was overruled.

But by the exercise of due diligence on the part of the allottee of shares he may be entitled to have his allotment cancelled, and his name removed from the list of shareholders, see *IN RE Scottish Petroleum Co., Anderson's case*, 17 Ch. D. . 373 *post*.

A question of fact.

The question whether a person has agreed to become a member of a Company is one of fact, *per Fry, J.*, *IN RE Albion Assurance Society, Winstone's case*, 12 Ch. D. . 239, 246. There it was held that *Miss Winstone*, by signing a proposal for a policy with profits whereby she agreed to execute the articles of association when required, and by signing the policy which recited the proposal, and that she had agreed to become a member upon the basis of that contract, and that the policy was to be subject to the articles of association, and by paying the premiums on the policy (which by the articles of association was to be deemed an agreement to become a member in respect thereof) had acceded to the articles and had agreed to become an assurance member of the Company, and was accordingly liable as a contributory.

N.B.—In the above case it was afterwards held that, though the policy-holders were contributories, they could not be called upon to contribute until the shareholders had been exhausted. See *IN RE Albion Assurance Society*, 15 Ch. D. . 79; affirmed 16 Ch. Div. 83, and see *post*, Sec. 124, (on Contributories) and note thereto.

In another case, however, relating to the same Assurance Society, it was held that a policy-holder having assigned his policy ceased to be liable as a contributory, although no other person had been made liable to contribute in respect of his policy in his stead. *Brown's case*, 18 Ch. D. . 639, see *post*, sec. 124 (on Contributories), and notes thereto. See further *IN RE Albion Life Assurance Society, Sander's case*, 20 Ch. D. . 403, where the assignees of a policy were held not to be contributories, inasmuch as a certain condition precedent to registration which was directed by the articles of association had not been satisfied or waived, see sec. 124 *post*, and notes thereto.

Agreement must be with the Company.

The agreement to take shares must be *with the Company* in existence at the time of the agreement. See *The Gujarat S. and W. Co. v. Girdharlal Dalpatram*, 1. L. R. 5 Bom. 425 *supra*.

In *IN RE Alliance Financial Association, Blaney's case*, 3 Bom. H. C. O. C. J. 106, an allotment of five shares in the Company was made to B. without any application by him for shares, but he paid the deposit on them, and afterwards went to the office of the Solicitor of the Company, in order, as he said, to sign the documents necessary to make him a shareholder, and did sign certain sheets of paper, not annexed, as he said, to the memorandum or articles of association. It was held that there had been an acceptance of the shares by B. sufficient to constitute him a shareholder under Act XIX. of 1857.

See the other points decided in the above case, *supra*.

As to the mode in which a shareholder may exonerate himself by selling his shares to the Company itself see *IN RE The Mercantile Credit and Financial Association*; ex parte *M. R. Dalvi*, 3 Bom. H. C. O. C. J. 125, and Cf. *IN RE Dronfield Silkstone Coal Co.*, 17 Ch. Div. 76. But a sale to an individual director acting in his private capacity is not enough. *IN RE The East Indian Trading and Banking Co.*; *Jamnadas Savaklal's case*, 3 Bom. H. C. O. C. J. 113.

Where shares are held by a firm they should stand in the name of the firm. See *The London, Bombay, and Mediterranean Bank v. Bhanji Zutani*, 1. L. R. 2 Bom. 116, see *post*, note to sec. 124.

A material variance between the registered memorandum of association and that signed by the defendant's *munim*, who had authority in that behalf, was held sufficient in the absence of laches or other special circumstances, to exonerate the defendant from liability. *Anandji Visram v. The Nariad Spinning and Weaving Co.*, 1. L. R. 1 Bom. 320. See *Felgate's case*, 2 D. G. F. and J. 456.

Where a husband applied for shares in the name of his wife and the Company accepted a wife as a shareholder without any misrepresentation or concealment on the part of the husband, the husband's estate was held not liable in respect of the wife's shares, and the wife's name was kept on the list of contributories. *IN RE London, Bombay, and Mediterranean Bank*, 18 Ch. D. 581. See *post*, note to sec. 124. "But what I do not find here," said *Sir C. Hall, V. C.* (p. 586), "is that element which I think exists in all cases in which a person has been put upon the register who is not the person whose name was originally there. I do not find any case in which that has been done where there has been no concealment of the real transaction from the Company, and they have thought fit to accept the person as a shareholder. There is no misrepresentation or concealment in this case as to infancy or otherwise which will enable the Court to act."

Shares taken in the name of another.

For the cases relating to shares applied for and taken in the name of infants, See *Buckley*, 4th ed. 69.

Per *Earl Cairns, L. C.*, in *Buchan's case*, 4 Ap. Ca. 549, 588, an executor whose testator has held shares in a joint stock Company has generally one of two courses open to him. He may have the shares transferred into his name, and become to all intents and purposes a partner in the Company. He may, on the other hand, not wish to have the shares transferred into his own name, and he ought in that case to have a reasonable time allowed him to sell the shares, and to produce a purchaser who will take a transfer of them.

Executors.

Per *Lord Selborne*, in *Buchan's case*, 4 Ap. Ca. 595 *et seq.* The case of trustees who take a transfer of shares in their names differs, in principle, from that of executors, who merely intimate their title as executors to a Company, in order to claim and exercise the rights which belong to them as the legal representatives of their testator. . . Trustees have not, in any proper sense of the word, a representative character, but executors have. . . Having representative rights, it is impossible that they should not be entitled to produce the legal evidence of them to the Company, for the purpose of having their title in some way recorded and recognized, without making themselves personally liable.

Trustees and executors distinguished.

Liability of executors for non-conversion of shares into money.

Where the will of a Portuguese testator contained no special direction for conversion, nor any sufficient indication of an intention on the part of the testator that the residuary legatees and devisees should enjoy the residue successively *in specie*, so as to exempt the executors from the duty of conversion, and the executors did not convert certain shares belonging to their testator, which subsequently became much depreciated in value, the court refused to apply for the first time the rules and principles established by the decisions of the Court of Chancery in England relating to the duty of an executor to convert, in the absence of any special direction to that effect in the will (under which rules and principles the Court was of opinion the executors would have been liable had the case arisen in England,) as the Supreme and High Court of Bombay had not, by any general rule or uniform practice, adopted any Government security accessible to a private executor or trustee in such a manner as to form an authoritative guide to him in his administration of the estate, and because the circumstances by reason of which the rules in question have been imposed on executors and trustees in England have not existed in India. *De Souza v. De Souza*, 12 Bom. H. C. 184, Cf. *IN RE Norington, Brindley v. Partridge*, 13 Ch. Div. 654.

Effect of discharge of insolvent shareholder.

As to the effect of the personal discharge of an insolvent shareholder under sec. 47 of the Indian Insolvent Act (11 and 12 Vic., c. 21) and his discharge under sec. 24 of Act XXVIII. of 1865, with reference to his liability to pay calls made in the winding up of a Company, see *Baba Sahab Domasker's case*, 8 Bom. H. C. O. C. J. 117, and *Punnett v. Vinayak Pandurang*, 9 Bom. H. C. 27 respectively; see also *IN RE East India Cotton Agency, Furdoonjee's case*, 3 Ch. D. 264, but *Furdoonjee's case* was not followed *IN RE Mercantile Mutual Marine Insurance Association*, 25 Ch. D. 415, and see these cases more fully referred to, *post*, note to sec. 127.

Power of deposit of shares to sell them.

Where the registered holder of shares in a Company, whose articles of association did not require that a transfer of shares should be made by deed, deposited the certificates of his shares, accompanied by a transfer executed by himself, but with the name of the transferee and the date of execution left in blank, with a person who advanced him money, as security for the loan; and no time was fixed for the repayment of the loan, nor was anything said as to the object of the transfer; it was held that the deposit had no authority, without a previous demand for repayment of the loan, to sell or sub-mortgage the shares and fill in the name of the purchaser or sub-mortgagee as transferee. *France v. Clark*, 22 Ch. D. 830, affirmed, but on different grounds, 26 Ch. Div. 257.

Transfer by personal representative.

46. Any transfer of the share or other interest of a deceased member of a Company under this Act, made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer (i).

Sec. 24 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 23 of the Indian Companies' Act X. of 1866.

(i) See Sched. I., Table A, Art. 12. Cf. also Table B to Act XIX. of 1857, *post*.

See *London and Provincial Telegraph Co.*, L. R. 9, Eq. 653.

Register of members.

47. Every Company under this Act shall cause to be kept in one or more books a register of its

members, and there shall be entered therein the following particulars :—

(a) the names and addresses, and the occupations, if any, of the members of the Company, with the addition, in the case of a Company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member ;

(b) the date at which the name of any person was entered in the register as a member ;

(c) the date at which any person ceased to be a member.

Where a share-warrant has been issued under section thirty, until the warrant is surrendered, the particulars mentioned in section thirty-four shall be deemed to be the particulars which are required by this section to be entered in the register of members of a Company ; and, on the surrender of a warrant, the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

Any Company acting in contravention of this section shall incur a penalty not exceeding fifty rupees for every day during which its default in complying with the provisions of this section continues, and every director or manager of the Company who knowingly and wilfully authorizes or permits such contravention shall incur the like penalty.

Sec. 25 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and Sec. 24 of the Indian Companies' Act, 1866, *verbatim*, save that the penalty in England is £5, not 50 rupees, but the last paragraph but one of the section corresponds with Sec. 31 of the English Companies' Act, 1867 ; see also secs. 30 and 31 *supra*.

Cf. sec 14 of Act XIX. of 1857.

As to what the register must contain in the case of conversion of shares into stock, see sec. 52 *post*.

It is the duty of a Company to keep its register properly. *Ex parte Dalti*, 3 Bom. H. C. O. C. J. 133, *Westropp, J.*

Per *Lord Hatherley* in *Buchan's Case*, 4 Ap. Ca. 592. " Every share is or ought to be appropriated to somebody or other in the share register, and the creditors must search and look at the share register, which is to be their guide in order to find whom they are to apply to in case a neces-

sity should arise for a contribution in consequence of their money not being paid."

Different books of a Company which substantially contained the information required by sec. 14 of Act XIX. of 1857 were held to sufficiently constitute a register of shareholders, and were not invalidated by unimportant omissions and deviations. IN RE *Alliance Financial Association, Blauy's case*, 3 Bom. H. C. O. C. J., 106. So also in England, *Weikersheim's case*, L. R. 8 Ch. 831, 836.

Where the actual numbers of the shares are not set out separately but the extreme numbers, i.e. the first and last without the intermediate ones are given, it may reasonably be concluded that the numbers not given were those which were intermediate between the numbers given. See *Bain v. Proprietors Whitehaven R. Co.*, 3 H. L. Ca. 1, cited and adopted by Sargent, J., in IN RE *Alliance Financial Corporation, Blauy's case* 3 Bom. O. C. J., 104, 111.

As to "amount paid or agreed to be paid," cf. table A, cl. 4, note *post* and sec. 28 *supra*, and cases there cited

Annual list
of members.

48. Every Company under this Act and having, a capital divided into shares (i), shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting (ii), or, if there is more than one ordinary general meeting in each year, the first of such ordinary general meetings, is held, are members of the Company. Such list shall state the names, addresses and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars (iii):—

(a) the amount of the capital of the Company and the number of shares into which it is divided ;

(b) the number of shares taken from the commencement of the Company up to the date of the summary ;

(c) the amount of calls made on each share ;

(d) the total amount of calls received ;

(e) the total amount of calls unpaid ;

(f) the total amount of shares forfeited ;

(g) the names, addresses and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary (iv) shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section ; and a copy shall

forthwith be forwarded to the Registrar of joint stock Companies.

Sec. 26 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and Sec. 25 of the Indian Companies Act X. of 1866, *verbatim*.

(i) As to other Companies see sec. 70 *post*.

(ii) S.c. 74 *post*.

(iii) As to particulars after a share-warrant has been issued, see sec. 49 *post*; and where capital has been converted into stock, sec. 52 *post*.

(iv) Sched. II., Form E, *post*.

Cf. sec. 15 of Act XIX. of 1857.

See the note to sec. 26, Buckley 4th ed. p. 78.

49. After the issue by the Company of a share-warrant, the annual summary required by section forty-eight shall contain the following particulars (namely):—the total amount of shares or stock for which share-warrants are outstanding at the date of the summary, and the total amount of share-warrants which have been issued and surrendered respectively since the last summary was made, and the number of shares or amount of stock comprised in each warrant.

Particulars to be contained in annual summary.

Sec. 32 of the English Companies' Act (30 and 31 Vic., c. 131), 1867.

As to share-warrants to bearer, see secs 30 to 35 *supra*.

50. If any Company under this Act and having a capital divided into shares makes default in complying with the provisions of this Act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the Registrar, such Company shall incur a penalty not exceeding fifty rupees for every day during which such default continues; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Penalty on Company, &c, not keeping a proper register. [not forwarding list or summary.]

Sec. 27 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 26 of the Indian Companies' Act X. of 1866, *verbatim*, substituting "fifty rupees" for "five pounds."

Cf. Act XIX. of 1857, sec. 15.

The marginal note of this section is wrong. The penalty for not keeping a proper register is provided for by sec. 47 *supra*.

An offence under this sec. is a *continuing offence*, see *Reg. v. Catholic Fire &c. Institution*, 48 L. T. 675.

Company to
give notice
of consolida-
tion or of
conversion of
capital into
stock.

51. Every Company under this Act having a capital divided into shares that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock (i), shall, within fifteen days of such consolidation, division or conversion, give notice to the Registrar of joint stock Companies of the same, specifying the shares so consolidated, divided or converted.

Sec. 25 of the English Companies' Act (25 and 26 Vic., c. 89, 1862, and sec. 27 of the Indian Companies' Act X. of 1866, *verbatim*, save that the English Act does not provide the limitation of time within which notice to the Registrar is to be given.

(i) See sec. 12 *supra*, and sched. I., table A, (23)-(25), *post*.

Effect of
conversion
of shares into
stock.

52. Where any Company under this Act and having a capital divided into shares has converted any portion of its capital into stock (i) and given notice of such conversion to the Registrar (ii), all the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the Company (iii), and the list of members to be forwarded to the Registrar (iv) shall show the amount of stock held by each member in the list, instead of the amount of shares and the particulars relating to shares hereinbefore required.

Sec. 29 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 28 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See sec. 12 *supra*, and sched. I., table A, (23)-(25).

(ii) Sec. 51 *supra*.

(iii) Sec. 47 *supra*.

(iv) Sec. 48 *supra*.

Entry of
trust on
register.

53. No notice of any trust, express, implied or constructive, shall be entered on the register or be receivable by the Registrar in the case of Companies under this Act and registered in British India.

Sec. 30 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 29 of the Indian Companies' Act X. of 1866, *verbatim*, save that the words "British India" stand for "England and Ireland" in the former statute.

Cf. sec. 17 of Act XIX. of 1857.

By sec. 266 of the Civil Procedure Code, XIV. of 1882, corresponding with sec. 266 of Act X. of 1877, "The following property is liable to attachment and sale in execution of a decree shares in the capital or joint-stock of any railway, banking or other public Company or Corporation, and, except as hereinafter mentioned, all other saleable property belonging to the judgment-debtor or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, and whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf." And by sec. 268 of the same Code corresponding with sec. 268 of Act X. of 1877, "In the case of a share in the capital of any public Company or Corporation the attachment shall be by a written order prohibiting the person in whose name the share may be standing from transferring the same or receiving any dividend thereon. And a copy of such order shall be fixed up in some conspicuous part of the Court-house and another copy shall be sent in the case of the share to the proper officer of the Company or Corporation." Attachment of shares in execution.

Cf. Order XLVI. of the Judicature Act, 1875, Rule I (Wilson's Judicature Acts, 3rd ed.), and see *South Western Loan and Discount Co. v. Robertson*, 8 Q. B. D. 17, where it was held that the fact that the stock stood in the name of trustees in trust for another, besides the judgment-debtor, did not prevent its being stock "standing in the name of any person in trust for him," within the words of sec. 14 of 1 and 2 Vic., c. 110.

As to the personal liability of trustees in respect of shares standing in their names, see the following cases which arose out of the failure of the City of Glasgow Bank:—*Muir v. City of Glasgow Bank*, 4 Ap. Ca. 337, where it was held that the appellants (*Muir and others*) were partners of the Company, which was registered but not formed under the Companies' Act, 1862, and as such were personally liable for payment of all calls made on them in respect of the stock which they held, although in the stock ledger (register of shareholders) they appeared as "trust disponees" for other persons. Personal liability of trustees.

Bull's Case, 4 Ap. Ca. 547, *Buchan's Case*, *ibid.* 549, where Lord Selborne thus delivered his opinion on the distinction between the liabilities of executors and trustees on account of shares transferred to them (at p. 595): "The case of trustees who take a transfer in their names differs, in principle, from that of executors, who merely intimate their title as executors to a Company, in order to claim and exercise the rights which belong to them as the legal representatives of their testator Trustees have not, in any proper sense of the word, a representative character, but executors have Having representative rights, it is impossible that they should not be entitled to produce the legal evidence of them to the Company, for the purpose of having their title in some way recorded and recognized, without making themselves personally liable."

By sec. 126 *post*, representative liability in the case of executors is distinctly recognized.

See also *Ke's Case*, *ibid.* 549, 598; where a resignation by the trustee of his trusteeship which was accepted by his co-trustees, but not regularly intimated to or acted upon by the bank, upon whose register the name of the trustee remained until its stoppage, had not the effect of exempting him from personal liability. *Earl Cairns, L. C.*, p. 572: "The name of the appellant having been duly entered upon the register, and appearing there at the time of the winding up, he is clearly liable to be placed on the list of contributories, unless he can show something more than his mere resignation of his trusteeship. His resignation of his trusteeship alone would not terminate his liability to the bank. He ceased to be a trustee; but it remained for him to terminate his liability in respect of the bank by a transfer, or something equivalent to a transfer of his shares."

See further as to the liability of trustees, *Cunningham v. City of Glasgow Bank*, 4 Ap. Ca. 607; where the trustee was held liable, although he had

not actually signed the transfers of the stock to himself and his co-trustees, but had signed together with them a note approving of the purchase of the stock, and a subsequent letter to the bank authorizing the payment of dividends, and had been entered on the register of members of the bank.

As to the joint and several liability of trustees, see *Gillespie v. City of Glasgow Bank*, 4 Ap. Ca. 632. And as to the liability of trustees *in solido* and not *pro ratâ*, see *Cuninghame v. City of Glasgow Bank*, 4 Ap. Ca. 607.

It is immaterial for the purpose of qualification of a director that he has transferred the beneficial interest in his shares to another person, so long as he is registered as holding the capital required, see *Pulbrook v. Richmond Consolidated Mining Co.*, 9 Ch. D. 610.

As to the relative positions of trustee and *cestui que trust* towards the Company and towards themselves respectively and as to the right of the trustee to be indemnified by his *cestui que trust*, &c., see Mr. Buckley's Note to sec. 30 of the English Act, 1862 (4th ed., pp. 80-85), and Lindley, 4th ed., pp. 730, 758, 1358.

Certificate of
shares or
stock.

54. A certificate under the common seal of the Company, specifying any shares or stock held by any member of a Company, shall be *prima facie* evidence of the title of the member to the share or shares or stock therein specified.

Sec. 31 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 30 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 19 of Act XIX. of 1857.

It is to be observed that the present Act, as well as the former Acts, both in England and India, is silent on the question of a member's *right* to require a certificate—although table A. art. (2) provides for this.

Although a Company which has registered shares in A's name under a forged transfer and issued to him a certificate in respect thereof, stating that the shares are standing in his name, will be estopped by the certificate from setting up against B, a *bonâ fide* transferee, the infirmity of A's title. *IN RE Bahia and San Francisco Ry. Co.*, L. R., 3 Q. B. 584, and *Hart v. Frontino, &c., Gold Mining Co.*, L. R. 5. Ex. 111; so also where the Company had issued a certificate upon a transfer which had been forged by its own Secretary: *Shaw v. Port Philip &c., Co.* 13 Q. B. D. 103.

Still this will not be the case where the party contracting to purchase the stock or shares belonging to the real owner acts upon the faith of a forged transfer only, and has not relied on any act of the Company. *Simm v. Anglo-American Telegraph Co.*, 5 Q. B. Div. 188, 49 L. J. Q. B. Div. 332; 42 L. T. 37; 23 W. R. 290. In this case the party contracting to purchase the stock, though himself innocent of any fraud, had been the means of sending to the Company a transfer purporting to be executed by the real owner, but which was forged, and the Company had been induced thereby to recognize the nominee of the contracting party as the holder.

Cotton, L. J., at p. 213, distinguishes the case from *Re Bahia, &c. Co.*, L. R. 3 Q. B. 584, and *Hart v. Frontino, &c., Gold Mining Co.*, L. R. 5 Ex. 111, and proceeds as follows:—

"To a buyer who did not know the real facts, the certificate would amount to a representation that the sellers were entitled to the stock, and under the doctrine of estoppel, the buyer might maintain an action against the Company, not as the real owner of the stock, but as a person whom the Company were bound to treat as the real owner, because they had stated to him that the sellers to him were the real owners and that the transfer to the sellers was valid. But the facts here are very different."

And *Bramwell, L. J.*, p. 202, says:—"For a man to have a true title as the transferee of stock, his transferor must have had the stock; his transferor must have executed an instrument of transfer, and the transferee must have accepted that instrument. The last-named condition is no doubt fulfilled, for *Burge & Co.* [i. e. the transferees] did intend to accept the supposed instrument of transfer. *Upon general principles, and upon the authority of the cases cited to us, I think the Company would have been estopped from denying that Coates* [i. e. the original owner] *was the holder of the stock; but why are they estopped from denying that he transferred it?"*

See and consider *Waterhouse v. L. and S. W. Ry. Co.*, and *Coates v. L. and S. W. Ry. Co.*, 41 L. T. 553. See further on the question of estoppel *R. v. Romford Canal Co.*, 24 Ch. D. 85, and *Palmer's Company Precedents*, 3rd ed., 223.

55. The register of members, commencing from the date of the registration of the Company, shall be kept at the registered office of the Company hereinafter mentioned (i). Except when closed as hereinafter mentioned (ii), it shall, during business hours, but subject to such reasonable restrictions as the Company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one rupee, or such less sum as the Company may prescribe, for each inspection. Inspection of register.

Every such member or other person may require a copy of such register, or of any part thereof, or of such list of summary of members as is hereinbefore mentioned, on payment of two annas for every hundred words required to be copied.

If such inspection or copy is refused, the Company shall incur for each refusal a penalty not exceeding fifty rupees, and a further penalty not exceeding twenty rupees for every day during which such refusal continues.

Every director and manager of the Company who knowingly authorizes or permits such refusal shall incur the like penalty.

In addition to the above penalty any Judge of a High Court may by order compel an immediate inspection of the register.

Sec. 32 of the English Companies' Act (25 and 26 Vic., c. 89), *mutatis mutandis*, and sec. 31 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Sec. 63 *post*.

(ii) Sec. 56 *post*.

Cf. sec. 21 of Act XIX. of 1857.

Power to
close register.

56. Any Company under this Act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the Company is situate and in the local official Gazette, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Sec. 33 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 32 of the Indian Companies' Act X. of 1866, adding the words "and in the local official Gazette."

Cf. sec. 22 of Act XIX. of 1857.

In *Mothoormohun Roy v. Bank of Bengal*, I. L. R. 3 Cal. 392, it was decided that the Bank of Bengal was entitled to refuse to register a transfer of shares when the application was made during the time the transfer books of the bank were closed under the powers given by Sec. 21 of Act IX. of 1876 (Presidency Banks Act), and after a public notification in accordance therewith; and though the bank might not have given this reason for refusing to register at the time of the application being made, they were entitled to avail themselves of it subsequently, when a suit was brought to compel them to register the transfer.

Notice of
increase of
capital and
of members
to be given
to Registrar.

57. Where a Company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a Company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the Registrar, in the case of an increase of capital within fifteen days from the date of the passing of the resolution by which such increase has been authorized, and in the case of an increase of members, within fifteen days from the time at which such increase of members has been resolved on or has taken place; and the Registrar shall forthwith record the amount of such increase of capital or members.

If such notice is not given within the period aforesaid, the Company in default shall incur a penalty not exceeding one hundred rupees for every day during which such neglect to give notice continues; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Sec. 34 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting "one hundred rupees" for "five pounds" in that section, and sec. 33 of the Indian Companies' Act X. of 1866 *verbatim*.

Cf. sec. 42 of Act XIX. of 1857.

58. If the name of any person is fraudulently or without sufficient cause entered in, or omitted from, the register of members kept by any Company under this Act, or if default is made or unnecessary delay takes place, in entering on the register the fact of any person having ceased to be a member of the Company, the person or member aggrieved, or any member of the Company, or the Company itself, may, by application to the principal Court of original civil jurisdiction in the district or place in which the registered office of the Company is situate, apply for an order of the Court that the register may be rectified; and the Court may either refuse such application, with or without costs to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the Company to pay all the costs of such application, and any damages the party aggrieved may have sustained.

Remedy for improper entry or omission of entry in register.

The Court may, in any proceeding under this section, decide any question relating to the title of any person who is a party to such proceeding to have his name entered in, or omitted from, the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the Company, and whether there has or has not been default on the part of the Company; and generally the Court may, in any such proceeding, decide any question that it may be necessary or expedient to decide for the rectification of the register: Provided that the Court may direct an issue to be tried in which any question of law may be raised; and an appeal in the manner directed by the Code of Civil Procedure shall lie(i).

Sec. 35 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, *mutatis mutandis*, as to the Courts to which, and the mode by which (*i. e.* by motion, or in chambers, &c.) application is to be made, and sec. 34 of the Indian Companies' Act X. of 1866, inserting the words "fraudulently or."

(i) See also sec. 147 *post*.

Cf. sec. 23 of Act XIX. of 1857.

The words "fraudulently or" are new in the present Act; but it would seem that they are inserted to give legislative sanction to the judicial interpretations of the words "without sufficient cause," see per *Kelly*,

C.B., in *ex parte Ward*, L. R. 3, Ex. 180, and per *Giffard, L. J.*, in *ex parte Kintrea*, L. R. 5 Ch. 96-99, cited at p. 94 of Mr. Buckley's book (4th ed.)

Juri-diction of the Court.

A. As to the *jurisdiction* of the Court under this section: (a) as between alleged shareholders and the Company; (b) as between members or alleged members themselves, see Buckley, 4th ed., pp. 90 to 94, and the cases cited there.

The power given to the Court is discretionary, see *In the matter of the Indian Co.'s Act 1866* and *the Petition of Luchmen Chand* I. L. R. 8 Cal. 317.

Fraudulently or without sufficient cause.

B. *Fraudulently or without sufficient cause*, see Buckley, 4th ed., pp. 94 *et seq.*, where he discusses the following points:—

i. What constitutes such a misrepresentation, or such a discrepancy between the prospectus and memorandum of association, as entitles the shareholder to be relieved from his contract.

ii. What is a reasonable time within which he must apply for relief.

iii. The difference in his right to relief as against the persons who prepared and issued the prospectus, or the Company, and as against the creditors of the Company.

iv. Apart from rescission of the contract, what rights he has against the persons or the Company who have fraudulently induced him to take shares.

(i) See *Anandji Visram v. Nariad S. & W. Co.* I. L. R. 1 Bom. 320.

N.B.—A statement made by the chairman to the shareholders of a Company is not admissible as evidence against the Company in an application by a shareholder to have his name removed on the ground of misrepresentation in the prospectus, *IN RE Devala Provident Gold Mining Co.*, 22 Ch. D. 593.

To the cases (cited at p. 99 of Buckley, 4th ed.), where relief was given in consequence of misrepresentation, add *IN RE The Scottish Petroleum Co.*, 23 Div. 413; where *Anderson's Case*, 17 Ch. D. 373, was approved.

(iii) As to the shareholder's right to relief as against creditors, per *Cairns, L. C.*, in *Tennent v. City of Glasgow Bank*, 4 Ap. Ca. at p. 621. "The case of *Oakes v. Turquand* (L. R. 2 H. L. 325) however, while it "decided negatively that a contract could not be rescinded on the ground "of fraud after a winding-up had commenced, did not decide affirmatively "the converse proposition, that *up to the time of the commencement of a "winding up* a contract to take shares could be rescinded upon the ground "of fraud. Whether it can or not be so rescinded must, I think, depend "upon the particular circumstances of the case

"In an ordinary partnership, not formed on the joint-stock principle, it "is impossible, as a general rule, for a partner at any time to retire from "or repudiate the partnership without satisfying, or remaining bound to "satisfy, the liabilities of the partnership. He may have been induced by "his co partners by fraud to enter into the partnership, and that may be "a ground of relief against them, but it is no ground for getting rid of a "liability to creditors. This is the case, whether the partnership is a going "concern, or whether it has stopped payment or become insolvent. In "the case of a joint-stock Company, however, the shares are in their "nature and creation transferable, and transferable without the consent of "creditors, and a shareholder, so long as the Company is a going concern, "can, by transferring his shares, get rid of his liability to creditors, either "immediately or after a certain interval. The assumption is that, while "the Company is a going concern, no creditor has any specific right to "retain the individual liability of any particular shareholder.

"It is on the same, or on a similar, principle that, so long as the Company "is a going concern, a shareholder who has been induced to take up "shares by the fraud of the Company has a right to throw back his shares "upon the Company without reference to any claims of creditors. He would

"have a right to transfer his shares without reference to creditors. The Company, as a going concern, is assumed to be solvent, and able to meet its engagements, and to have a surplus, and the Company being solvent its duty to pay the repudiating shareholder what is due to him, and to take the shares off his hands, is an affair of the Company and not of its creditors.

"But if the Company has become insolvent, and has stopped payment, then, even irrespective of the winding-up, a wholly different state of things appears to me to arise. The assumption of new liabilities under such circumstances is an affair not of the Company but of its creditors. The repudiation of shares which, while the Company was solvent, would not, or need not, have inflicted any injury upon creditors must now of necessity inflict a serious injury on creditors. I should, therefore, be disposed, in any case, to hesitate before admitting that, after a Company has become insolvent and stopped payment, whether a winding-up has commenced or not, a rescission of a contract to take shares could be permitted as against creditors."

See further, *Alexander Mitchell's case*, 4 Ap. Ca. 548; *Rutherford's case*, *ibid.*; and *Nelson Mitchell v. City of Glasgow Bank*, 4 Ap. Ca. 624.

And although fraudulent misrepresentations may entitle a shareholder to rescind his contract if the Company were a going concern, yet where that is impossible,—e.g. by a winding-up,—they afford no ground for an action for damages against the liquidators: a person induced by fraud to become a shareholder can bring no action for damages against the Company while he remains in it: he cannot approbate and reprobate—see *Houldsworth v. City of Glasgow Bank*, 5 Ap. Ca. 317, 325.

Nor is a shareholder entitled, after a winding-up, to a rescission, on the ground of fraud, of his contract to take shares, even if the assets in the hands of the liquidators are sufficient to pay in full the whole liabilities of the Company together with the costs of the winding-up. *IN RE Hull and County Bank, Burgess's case*, 15 Ch. D. 507 *post*, note to Sec. 61.

Again, where a transfer is valid and effectual and the rights of creditors have intervened, the register will not be disturbed. *Croe v. Somervail*, 4 Ap. Ca. 648. See also *IN RE Scottish Petroleum Co.*, 23 Ch. Div. 413.

A shareholder who seeks to take advantage of proceedings in a representative case must give the Company notice of his intention at a time when he can be relieved of his liability as a shareholder—see *IN RE Scottish Petroleum Co.*, 23 Ch. Div. 413.

iv. Under this head it is to be observed that the principles applicable to an action to rescind an agreement to take shares are entirely distinct from those applicable to a 'common law action' for deceit, "in which it is necessary to prove that a statement has been made, which, to the knowledge of the person making it, was false, or which was made by him with such recklessness as to make him liable just as if he knew it to be false, and that the Plaintiff acted on that statement to his prejudice or damage." *Colton, L. J.*, in *Arkwright v. Newbold*, 17 Ch. Div. p. 320. In that case also *James, L. J.*, p. 329, says:—"We cannot accede to the suggestion that the persons issuing a prospectus are liable to an action of deceit because they do not mention a fact coming to their knowledge before the allotment of shares which falsifies a statement in the prospectus." See also *Smith v. Chadwick*, 19 Ch. Div. 27, affirmed 9 Ap. Ca. 187, and *Redgrave v. Hurd*, 20 Ch. Div., 1, as to such actions.

Where a condition precedent to registration has not been satisfied or waived, an omission to register is not made "without sufficient cause." *IN RE Albion Life Assurance Society, Sanders' case*, 20 Ch. Div. 403. See *supra* note to Sec. 45, where the assignee of a policy was held not a contributory.

The Court will not order a transfer to be registered, where the alleged transferor is not before the Court and there is any real doubt as to the

validity or *bond fides* of the transaction. *Petition of Luckmen Chand*, 1. L. R. 8 Cal. 317.

Default or unnecessary delay.

See Buckley, 4th ed. 117 *et seqq.*

When a Company has adopted table A as its articles of association, it cannot refuse to register the name of a trustee in bankruptcy of a shareholder on the ground that the shareholder is indebted to the Company: "transfer" under Art. 10 being quite distinct from the transmission by devolution of law which is contemplated by art. 13. IN RE *Bentham Mills Spinning Co.*, 11 Ch. Div., 900, and see note to those articles *post*; and see also *ex parte Harrison* IN RE *Cannock and Rugeley Colliery Co.* 26 Ch. D. 622.

"If directors in the fair and *bond fide* exercise of their powers under the Company's contract, as managers of the Company, and in circumstances which made it a reasonable act of management, resolve not to record future transfers which may seriously affect and alter the liability of the partners, the resolution will be effectual, and the directors in declining to record the transfers cannot be held to be in default within the meaning of sec. 35 of the Companies' Act, 1862." *Alexander Mitchell's case*, 4 Ap. Ca. 548, 567, followed in *Rutherford's case*, *ibid.* 548, 581.

But where a Company refused to register a transfer of shares purchased by an execution creditor, on the ground that no share certificate had been produced, but the sale had been confirmed, and transfer signed by a Judge under sec. 267 of Act VIII. of 1859, a writ of mandamus was directed to issue, ordering the Company to register the transfer and to issue fresh share certificates in respect of the shares. *The Queen v. The East Indian Railway Company*. Bourke's Rep. O. C. J. 395; and 1 Ind. Jur. N. S. 258 [1865].

For circumstances which will entitle a Company to refuse to register a transfer of shares, see *Knowles v. National Bank*, 2 Beng. L. R. O. C. 158.

"Satisfied of the justice of the case." See per Lord Hatherley in *Alexander Mitchell's case*, 4 Ap. Ca., pp. 576, 577.

Laches on the part of the transferor:—

But laches on the part of the vendor of shares in effecting a transfer of them will preclude him from obtaining relief in respect of his liability on his shares, IN RE *The East Indian Trading and Banking Co.*, *Jamnadas Savakul's case*, 3 Bom. H. C. O. C. J. 113 [Act XIX. of 1857].

Of the Company.

Nor can a Company which has treated itself as the owner of its own shares be permitted to take advantage of its own neglect or that of its officers in not registering the shares in its own name. IN RE *the Mercantile Credit and Financial Association*, *ex parte M. R. Dalvi*, 3 Bom. H. C. O. C. J. 125. [Act XIX. of 1857].

"To escape liability as against the official liquidator in the winding-up, "it is incumbent upon the transferor to show that at some time or other "there was or (but for the default of the Company) there could have been "upon the register a transferee of his who could be made liable at law in "respect of the shares." Buckley, 4th ed., 119, and cases there cited; and Lindley, 4th ed. 1400.

By sec. 29 *supra* the transfer may be registered at the request of the transferor.

As to what is sufficient proof of incorporation of a Company and what substantially constitutes a register of shareholders to prevent a person's name being removed. See *Blaney's case*, 3 Bom. H. C. O. C. J. 103.

As to the right of the vendor of shares who is not entitled to be removed from the register to be indemnified by the person who has under the contract of sale become the equitable owner, see Buckley, 4th ed., p. 121 *et seqq.*, and the cases there cited. Cf. *Shelford on the Law of Joint Stock Companies*, 2nd ed., Chap. VII., p. 159; and Lindley, 4th ed. 713, 729.

59. Whenever any order has been made for rectifying the register in the case of a Company hereby required to send a list of its members to the Registrar, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar. Notice to Registrar of rectification of register.

Sec. 36 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 35 of the Indian Companies' Act X. of 1866, *verbatim*.

60. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorized to be inserted therein. Register to be evidence.

Sec. 37 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 36 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See sec. 47 *supra* and notes thereto.

Cf. sec. 24 of Act XIX. of 1857.

For the general rules relating to registers regarded as evidence of membership, see Lindley on Partnership, 4th ed., pp. 138 *et seq.*; and consider *Blaney's case*, 3 Bom. H. C. O. C. J. 103, referred to *supra*; and the judgment of the Lord President which is adopted by *Earl Cairns, L. C.*, in *Bell's case*, 4 Ap. Ca. note to p. 559.

Liability of Members (i).

61. In the event of a Company formed under this Act being wound up, every present and past member (ii) of such Company shall be liable to contribute to the assets of the Company to an amount sufficient for payment of the debts and liabilities of the Company and the costs, charges and expenses of the winding-up and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves (iii), with the qualifications following, (that is to say):— Liability of present and past members of Company.

(a) No past member shall be liable to contribute to the assets of the Company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up (iv):

(b) No past member shall be liable to contribute in respect of any debt or liability of the Company contracted after the time at which he ceased to be a member:

(c) No past member shall be liable to contribute to the assets of the Company unless it appears to the Court that the existing members are unable to

satisfy the contributions required to be made by them in pursuance of this Act.

(d) In the case of a Company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid(v) on the shares in respect of which he is liable as a present or past member :

(e) In the case of a Company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association(vi) :

(f) Nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the Company are alone made liable in respect of such policy or contract(vii) :

(g) No sum due to any member of a Company in his character of a member, by way of dividends, profits or otherwise, shall be deemed to be a debt of the Company payable to such member in a case of competition between himself and any other creditor not being a member of the Company ; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves(viii).

Explanation I.—The liability of past members is a liability to contribute to the general assets of the Company, against which assets creditors (at whatever time their debts may have been contracted) have equal rights.

Explanation II.—In estimating the debts to which a past member is liable, all dividends paid on these debts under the winding-up must be deducted.

Sec. 38 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 37 of the Indian Companies' Act X. of 1866, *verbatim*, down to the explanations ; as to which see *infra*.

(i) The liability of directors of a limited Company may be unlimited, *supra* sec. 7.

(ii) Sec. 45 *supra*.

- (iii) Sec. 157 *infra*.
- (iv) Secs. 133 and 174 *infra*.
- (v) See sec. 48 *supra*.
- (vi) Secs. 9 *supra* and 139 and 178 *infra*.
- (vii) See the cases cited to this clause, p. 128, Buckley, 4th ed.
- (viii) See sec. 150 *infra* and note thereto.

Cf. secs. 60—62 of Act XIX. of 1857.

Explanation I.—This embodies the opinions of the Law Lords in *Webb v. Whiffin*, L. R. 5 H. L. 711. See also *IN RE Oriental Commercial Bank, Morris's case*, L. R. 8 Ch. 800.

Explanation II.—The decisions in *IN RE Blakely Ordnance Co., Brett's case*, L. R. 8 Ch. 800, and *Morris's case*, *ibid*.

The section applies to all kinds of winding-up, *i.e.*, to a winding-up by an order of the Court, to a winding-up voluntarily, and to a voluntary liquidation under the supervision of the Court: there is no distinction: per *Jessel, M. R.*, in *IN RE Whitehouse & Co.*, 9 Ch. D. at p. 599.

For the definition of “a contributory,” see sec. 124 *post*.

Every present and past member shall be liable to contribute, &c., see Contribution. per *Jessel, M. R.*, in *IN RE Whitehouse & Co.*: “That is a new liability: he is to contribute; it is a new contribution. It is a mistake to call that a debt due to the Company. It is no such thing. It is not, as has been supposed, in any shape or way a debt due to the Company, but it is a liability to contribute to the assets of the Company; and when we look further into the Act, it will be seen that it is a liability to contribution to be enforced by the liquidator. It is quite true that a call made before the winding-up—and in the case before me, the call was made before winding-up—is a debt due to the Company, but that does not affect this new liability to contribution.”

A liability to contribute to the assets of a Company is entirely distinct from the “property” of the Company, see per *Jessel, M. R.* in *IN RE Colonial Trusts Corporation*, *ex parte Bradshaw*, 15 Ch. D. 471.

A member of a duly registered Company, whose shares have been Past Members. forfeited, is as much a past member as a member whose shares have been surrendered or transferred, but he is not liable to be placed on the list of contributories until it is established that the existing members are unable to satisfy the contributions required to be made by them, and that the debts in respect of which he is called upon to contribute, were incurred prior to the date on which he ceased to be a member of the Company. *IN RE Allahabad Trading Co.* 1 N. W. R. 101. See further Buckley, 4th ed. 130 and cases there cited.

“For the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves,” see per *Jessel, M. R.*, in *IN RE Hall and County Bank. Burgess's case*, 15 Ch. D. 507, at pp. 511—513. See this case *supra* note to Sec. 58.

“The list of contributories will consist of two parts:—first, the list A list and B list. of present members, *i.e.* of those who are members of the Company at the commencement of the winding-up, commonly called the A list; secondly, the list of past members who have ceased to be members within a year before the commencement of the winding-up (see clause ‘a), commonly called the B list.’ And the relation of present and past members to each other is that of primary and secondary liability: not that of principal and agent.” Buckley, 4th ed., p. 131.

Clause (a). “The commencement of the winding-up,” as to when the winding-up commences in the case of a voluntary winding-up which is followed by a compulsory winding-up, see *RE Taurine Co.*, 25 Ch. Div. 118, and see sections 133 and 174 *post*.

Clause (c). See *IN RE Norwich Provident Insurance Society, Hesketh's Case*, 13 Ch. Div. 493, which reversed *Baths' case*, 11 Ch. D. 386, as being inconsistent with the decision in *Baths' Case*, 8 Ch. Div., 34.

Cf. *IN RE Albion Assurance Society*, 15 Ch. Div. 79, 16 Ch. Div. 83, where it was held that the participating policy-holders in an unlimited Insurance Society could not be called on to contribute until the shareholders had been exhausted, and see Mr. Buckley's note on classes of contributories, pp. 129, 130, 4th ed.

Clause (d). "Calls made in a winding-up, being calls for something unpaid on the shares, are not a debt due to the Company, but are contributions due by the member under this section. The contribution under this section also applies to the *unpaid* calls made before the winding-up; because, though that is a debt due to the Company, it is not the less an 'amount unpaid' on the shares in respect of which the member is liable, and therefore he must be liable to contribute all that is unpaid on his shares. It is as much unpaid if he had not paid the calls made before the winding-up, as it is in respect of the amount unpaid on the shares in respect of which no call has been made before the winding-up. It seems to me that the contributories' liability created by the 33rd section being only limited to the amount unpaid, it is immaterial, for the purpose of this section, whether the call was made before or after the winding-up, provided the amount is unpaid." Per *Jessel, M. R.* *IN RE Whitehouse & Co.*, 9 Ch. D. 600.

See the discussion on the words "remaining unpaid." Buckley, 4th ed., pp. 134 *seqq.*

Clause (e). See *Lion Mutual Marine Insurance Co. v. Tucker*, 12 Q. B. Div. 176, where it was held that "contribution" means contribution *as a member*, and therefore the limitation of liability in a Mutual Marine Insurance Company limited by guarantee did not apply to debts and liabilities to which the members by the rules of the association were to contribute as insurers or as assured, i.e. debts and liabilities of certain members to other members of the association. Accordingly the Court of Appeal, reversing the judgment of the Queen's Bench Division, held that the defendant was liable to contribute in respect of certain losses, which had happened before the winding-up of the Company, although such contribution exceeded the sum of £5, the amount limited in the memorandum of association. See also *IN RE Mercantile Mutual Marine Insurance Association*, 25 Ch. D. at 417, where *Chitty, J.*, gave a similar decision.

Clause (f). See the note and cases to this clause, Buckley, 4th ed. p. 128, and Cf. *Lion Mutual Marine Insurance Co. v. Tucker*, 12 Q. B., Div. 176 *supra*.

Clause (g). The plaintiffs in a suit brought on behalf of themselves and the other shareholders in a Company to impeach a fraudulent contract made between the Company and its promoters, were held not entitled to have their costs paid out of the assets of the Company in the winding-up, where the Company had been wound up before the trial, and the plaintiffs had not obtained leave to carry on the action, although the Judge who heard the suit had given the plaintiffs leave to apply in the liquidation of the Company for their costs. *IN RE Hull Central Drapery Co.*, 15 Ch. Div. 326.

With regard to the position of the B contributories as to the costs of winding-up, see Buckley, 4th ed, pp. 140—142.

As to the payment of the costs, charges and expenses of a winding-up by the Court, see sec. 158 *post*; and of a voluntary winding-up, sec. 188 *post*.

For the rules which have been established with respect to the contributories of a Company in liquidation and the application of their contributions, see Buckley, 4th ed., pp. 143, 144.

62. With respect to the contributions to be required in the event of the winding-up of a limited Company from any director or manager whose liability is unlimited, the following modifications shall be made in the last preceding section :—

Liability of director whose liability is unlimited.

(a) Subject to the provisions hereinafter contained, any such director or manager, whether past or present, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding-up a member of an unlimited Company :

(b) No contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the Company :

(c) No contribution required from any past director or manager in respect of any debt or liability of the Company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the Company :

(d) Subject to the provisions contained in the regulations of the Company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the Court thinks it necessary to require such contribution in order to satisfy the debts and liabilities of the Company, or the costs, charges and expenses of the winding-up.

Sec. 5 of the English Companies' Act (30 and 31 Vic., c. 131), 1867, *verbatim*, save that in the English Act the words are "and the costs, charges and expenses of the winding-up."

Sec. 7 *supra* provides for the unlimited liability of directors.

PART III.

MANAGEMENT AND ADMINISTRATION OF COMPANIES
AND ASSOCIATIONS UNDER THIS ACT.*Provisions for Protection of Creditors.*Registered
office of
Company.

63. Every Company under this Act shall have a registered office to which all communications and notices may be addressed(i). If any Company under this Act carries on business without having such an office, it shall incur a penalty not exceeding fifty rupees for every day during which business is so carried on.

Sec. 39 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, save that five pounds is the penalty, and sec. 38 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 26 of Act XIX. of 1857.

(i) See sec. 89 *post*.

As to service of a summons on a Company, see *post* Appendix Chap. XXIX, sec. 436 of the Civil Procedure Code (Act XIV. of 1882). Cf. sec. 17, Explanation II. of the Civil Procedure Code.

Notice of
situation of
registered
office.

64. Notice of the situation of such registered office and of any change therein shall be given to the Registrar and recorded by him. Until such notice is given, the Company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office.

Sec. 40 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 39 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 27 of Act XIX. of 1857.

Publication
of name by
a limited
Company.

65. Every limited Company under this Act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the Company is carried on, in a conspicuous position, in letters easily legible, in the English language, and also, if the registered office be situate in a district beyond the local limits of the ordinary original civil jurisdiction of a High Court, in one of the vernacular languages used in such district, and shall have its name engraven in legible characters in such language or languages on its seal, and shall have its name mentioned in legible

characters in such language or languages in all notices, advertisements, and other official publications of such Company, and in all bills of exchange, hundis, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of such Company, and in all bills of parcels, invoices, receipts and letters of credit of the Company.

Sec. 41 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, *mutatis mutandis*, and sec. 40 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 28 of Act XIX. of 1857.

66. If any limited Company under this Act does not paint or affix, and keep painted or affixed, its name in manner directed by this Act(i), it shall be liable to a penalty not exceeding fifty rupees for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed. Penalties on non-publication of name.

Every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall be liable to the like penalty.

If any director, manager or officer of such Company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the Company whereon its name is not so engraven as aforesaid(i), or issues or authorizes the issue of any notice, advertisement or other official publication of such Company, or signs or authorizes to be signed on behalf of such Company any bill of exchange, hundi, promissory note, endorsement, cheque, order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt or letter of credit of the Company wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of one thousand rupees, and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory note, cheque or order for money or goods for the amount thereof, unless the same is duly paid by the Company.

Sec. 42 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, *mutatis mutandis*, and sec. 41 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Sec. 65 *supra*.

Cf. sec. 29 of Act XIX. of 1857

With reference to the last paragraph of this sec. see *Penrose v. Martyr*, E. B. and E. 499; 28 L. J. Q. B. 28; 5 Jur., N. S., 362, where the Secretary of a limited Company, who had accepted a bill directed to the Company, in which the word "limited" as part of its name was omitted, was held personally liable on the bill, the same not having been paid by the Company.

Contracts.

Contracts
how made.

67. Contracts on behalf of any Company under this Act may be made as follows (that is to say) :—

(a) Any contract, which if made between private persons would be by law required to be in writing, and, if made according to English law, to be under seal, may be made on behalf of the Company in writing under the common seal of the Company; and such contract may be in the same manner varied or discharged :

(b) Any contract, which if made between private persons would be by law required to be in writing signed by the parties to be charged therewith, may be made on behalf of the Company in writing signed by any person acting under the express or implied authority of the Company; and such contract may in the same manner be varied or discharged :

(c) Any contract, which if made between private persons would by law be valid, although made by parol only and not reduced into writing, may be made by parol on behalf of the Company by any person acting under the express or implied authority of the Company; and such contract may in the same way be varied or discharged. And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the Company and their successors, and all other parties thereto, their heirs, executors or administrators, as the case may be.

Sec. 37 of the English Companies' Act (30 and 31 Vic., c. 131), 1867, and sec. 42 of the Indian Companies' Act X. of 1866.

Cf. sec. 45 of Act XIX. of 1857.

This is sec. 41 of 19 and 20 Vic., c. 47, 1857, and is similar to sec. 97 of the Companies' Clauses Act, 8 and 9 Vic., c. 16.

See sec. 72 *post*, as to promissory notes and bills of exchange; and sec. 66 *supra*, which compels the use of the proper name of the Company.

Clause (b). See *Purmanadas Jivandas v. H. R. Cormack and others*, I. L. R. 6 Bom. 326, where an agreement in writing entered into by the secretary and agent of the company whereby certain shares of the company

were mortgaged to secure an advance of money upon them was upheld against the Company.

Clause (c). See *Eales v. Cumberland Black Lead Mine Co.*, 6 H. and N. 481; 30 L. J. Ex. 141 (under 19 and 20 Vic., c. 47).

In *Stewart v. Scinde, Punjab and Delhi Railway Co.*, 5 Beng. L. R. 195, the defendants, a Railway Company incorporated under 20 and 21 Vic., c. 160 (with which Act was incorporated the Companies' Clauses Consolidation Act 8 and 9 Vic., c. 16) were held not liable upon a contract entered into by their agent who had not been appointed for the purpose in accordance with the provisions contained in the Company's Special Act; nor was the contract one by which, acting as such agent, he had power to bind the Company.

As to the cases relating to contracts made with Corporations, which are by statute directed to be under seal, see *Baton v. Basker*, 6 Q. B.D. 201, reversed on appeal 7 Q. B. Div. 529; *Young and Co. v. Corporation of Leamington*, 8 Q. B. Div. 579, affirmed in the House of Lords, 8 Ap. Ca. 517; *Lawson v. Wullesey Local Board*, 11 Q. B. Div. 229; and *Attorney General v. Gaskill*, 22 Ch. Div. 537.

68. Every limited Company under this Act shall keep a register of all mortgages and charges specifically affecting property of the Company, and shall enter in such register, in respect of each mortgage or charge, a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge. Register of mortgages.

If any property of the Company is mortgaged or charged without such entry as aforesaid being made, every director, manager or other officer of the Company who knowingly and wilfully authorizes or permits the omission of such entry shall incur a penalty not exceeding five hundred rupees.

The register of mortgages required by this section shall be open to inspection by any creditor or member of the Company at all reasonable times. If such inspection is refused, any officer of the Company refusing the same, and every director and manager of the Company authorizing or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding fifty rupees, and a further penalty not exceeding twenty rupees for every day during which such refusal continues.

The High Court or any Judge thereof may by order compel the performance of the duty imposed by this section on a limited Company, and in addition to the above penalty may by order compel an immediate inspection of the register.

Explanation.—Omission to register under this section a mortgage or charge does not render the same invalid. But the officers of the Company cannot avail themselves as such of a mortgage or charge specifically affecting property of the Company and not so registered.

The first three paragraphs correspond with sec. 43 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 43 of the Indian Companies' Act X. of 1866.

In lieu of the fourth paragraph the section in the Indian Act of 1866 continued as follows: "In addition to the above penalty any Judge of the High Court may by order compel an immediate inspection of the Register;" corresponding with the last paragraph of the section in the English Act, which, however, added the words "sitting in chambers" after Judge, and empowered the Vice-Warden of the Stannaries to make a similar order.

As to the first portion of the explanation see *ex-parte Valpy and Chaplin*, I. R. 7 Ch. 289, but see and consider *IN RE International Pulp Co.*, *Knowles' Mortgage*, 6 Ch. Div. at p. 561, and *IN RE South Durham Iron*, *Smith's case*, 11 Ch. Div. at p. 588.

As to the second portion of the explanation see the cases cited at pp. 147, 148 of Mr. Buckley, 4th ed., and the summary of them given at p. 148, *q. v.*, also as to the principle involved. A consideration of these cases will show that the most important words "as against creditors" have been omitted after the words "cannot avail themselves" in this explanation.

For the cases as between the Company and its directors, see Lindley on Partnership, 4th ed., p. 760 *et seq.*

But where a mortgage was made to partners who were not all directors of the Company, the rule that a director, manager or officer of the Company cannot avail himself of the security does not apply. *IN RE South Durham Iron Co.*, *Smith's case*, 11 Ch. Div. 579 (*diss. Baggallay, L. J.*) where all the cases are considered, and see especially the judgment of *Jessel, M. R.*, at pp. 588 *et seq.*

"I cannot see," says *Bramwell, L. J.* in *IN RE South Durham Iron Co.*, *Smith's case*, 11 Ch. Div. at p. 599, "who it is that would require the entry of the mortgage upon the register. It would not be anybody who is not a director, because it is admitted that the mortgage in his hands is good without registry, and it would not be anybody who is a director, because, of course, he could have it done without a mandamus."

"*Knowingly and wilfully.*"—"These words suppose a *mens rea*, culpable negligence," per *Bramwell, L. J.*, 11 Ch. Div. at p. 593.

"The Act requires registration, not of the instrument creating the charge, but of the property charged.....An express power is not required to authorize a Company to mortgage. A Company, as a body corporate, can deal with its property as freely as an individual can, unless specially prohibited by its articles from so doing, and can therefore, in the

absence of a prohibition in its articles, effect mortgages of its property. This power extends to a mortgage by deposit, and to giving such a security as well for a past debt as for a future advance." Buckley, 4th ed. 149, and cases there cited.

As to the power of a Company through its directors to borrow money upon its own shares, such power being within the purview of its memorandum and articles, see *Purmanandas Jivandas v. H. R. Cormack*, 1 L. R. 6 Bom. 327; as to how far the borrowing powers of directors, if exceeded by them, may be ratified by the Company, see *Irvine v. Union Bank of Australia*, 2 Ap. Ca. 366; L. R. 4 I. A. 86; 1 L. R. 3 Calc. 380. Borrowing powers.

Where a Company has power to issue legally transferable securities an irregularity in the issue cannot be set up against even the original holder if he has a right to presume '*omnia rite acta*.' IN RE *Romford Canal Co.*, 24 Ch. Div. 85.

Where directors were expressly authorized to borrow, on the security of the property of the Company, any sum "not exceeding two-thirds of the capital of the Company for the time being not called up," it was held that that term included shares which had not been issued; consequently although the monies secured on a mortgage of a ship, the Company's only property, much exceeded two-thirds of the amount not called up of the shares actually issued, but was within two-thirds of the whole nominal capital not called up, the mortgage was held within the powers of the directors and valid. *English Channel Ship Co. v. Rolt*, 17 Ch. D. 717.

In IN RE *Hamilton's Windsor Iron Works*, ex parte *Pitman and Edwards*, 12 Ch. Div. 707, it was held that a trading company has general power to borrow money to an extent which is reasonable and necessary for the purposes of its business, and that although a Company may have mortgaged its property and undertaking to secure debenture holders or mortgagees in an equivalent position, it was not thereby prevented from making a valid charge on a specific asset as a security for an advance of money necessary for carrying on its business.

When by the articles of association the directors had power "to raise or borrow.....sums of money.....by bonds, debentures, or promissory notes, or in such other manner as they deem best," it was held that though power to borrow money on bills of exchange was not specifically given, yet bills of exchange being in many respects analogous to promissory notes which were specifically mentioned, the power to raise money by an equally well-known and recognized mode, viz. by drawing, indorsing or accepting bills of exchange, must be deemed to be included in the general words "or in such other manner as they deem best." IN RE *The New Fleming S. and W. Co.*, 1 L. R. 3 Bom. 439, affirmed on appeal, 1 L. R. 4 Bom. 275. See this case referred to in note to sec. 72 post. And see *Choonil Seal v. Spence's Hotel Co.*, 1 B. L. R. O. C. 16; and compare IN RE *Port Canning Co.*, 7 B. L. R. 583.

See also IN RE *Florence Land and Public Works Co.* ex parte *Moor*, 10 Ch. Div. 530; where instruments called "obligations," by which the Company bound "themselves, their successors and assigns and all their property, estate, and effects" to repay the sums mentioned therein at a future date, constituted, when read with reference to the articles of association, a charge on the property of the Company, subject to the power of the directors to dispose of any part of such property in the ordinary course of their business. Per *James, L. J.*, at p. 546; "It seems to me that the word 'charge,' the word 'bind,' and the word 'oblige,' whatever may be the ordinary use by conveyancers of one or the other, in the English language and in legal language mean the same. To 'bind' means to charge, to 'charge' means to bind, 'oblige' means to charge or bind—all these words are absolutely, in my opinion, synonymous."

See further *IN RE Colonial Trusts Corporation*, ex-parte *Bradshaw*, 15 Ch. Div. 465, where the debentures were held to be a charge upon the real and personal estate of the Company as it existed at the commencement of the winding-up, but not including the uncalled capital. Cf. *English Channel Steamship Co. v. Rolt*, 17 Ch. D. 715, cited *supra*.

As to debentures being enforceable against all the assets of a Company as they existed at the date of the winding up, see *Hodson v. Tea Co.* 14 Ch. Div. 859.

The borrowing powers of Companies under sec. 42 of the Companies' Clauses Act 1845 (8 Vic. c. 16) were considered in *Landowners' West of England, &c. Land, &c. Co. v. Ashford*, 16 Ch. Div. 411.

In *IN RE Medla Tea Co.*, 1 L. R. 9 Calc. 14, it was held that there is a distinction between loans which a Company is empowered to raise under its borrowing powers, and debts which, in meeting its current liabilities and in the actual carrying on of its affairs, the Company, or its agents on its behalf, have contracted, and the cases of *Cefn Cilcen Mining Co.*, L. R. 7 Eq. 88, and *Waterlow v. Sharp*, L. R. 8 Eq. 501, were followed; but it is to be observed that the case of *Landowners' Co. v. Ashford*, 16 Ch. Div. 411, 437, was not referred to in the argument in that case. *q. v.*, also on the question of ratification of a borrowing in excess of the powers contained in the articles of association.

General
principles
applicable.

See also Buckley, 4th ed. 153. See further, as to overdrawing a banker's account by a Building Society being *ultra vires*, *Blackburn Building Society v. Cuntliffe Brookes and Co.*, 22 Ch. Div. 61; per Lord Selborne, L. C., at p. 70: "The general principles applicable to a case of this description are, we think, sufficiently well settled. There can be no doubt that when there is an express prohibition against borrowing, it must be obeyed. There is also no doubt that when there is not an express prohibition against borrowing in a case of a Company or a Society constituted for special purposes, no borrowing can be permitted without express authority, unless it be properly incident to the cause and conduct of the business for its proper purposes. Now, in this case there is no borrowing power, nor can it be said that a borrowing power generally can be necessary for the purposes of this Society; therefore it is not upon the footing of an incidental or expressed power to borrow, that anything can be allowed in this case. When the documents are looked at, in which the agreements between this society and their bankers, the appellants, are embodied, it is perfectly apparent that a course of dealing was contemplated and agreed upon between the bankers and the Society which was not authorized by the rules of the Society; and consequently, that any benefit of the securities which were in the hands of the bankers at the time of the winding-up, to which they may be legitimately entitled, is not founded upon these agreements, or upon that course of dealing; that so far as it depends upon the agreements and the course of dealing which was regulated by the agreements, the bankers are wrong, and the burden of showing that they are entitled to anything lies upon them, and not upon the other side. But there is an equitable principle, consistent with the law of which I have spoken, sound in itself, and also sufficiently established by authority, which may entitle them, nevertheless, to some benefit from their securities; and if the facts of the case give them the benefit of that equitable principle, it is consistent with justice and with authority to say that irregularity of either the form or the substance of their course of dealing shall not stand in the way of the justice due to them. That was established, to mention one case only, in *IN RE the Cork and Youghal Railway Company* (L. R. 4 Ch. Ap. 748), where it was held, in respect to that class of securities which were called *Lloyd's Bonds*, that although they could in themselves constitute no indebtedness as against the Company issuing them, yet nevertheless they might be so far evidence of a contract between the Company and the persons holding them, sufficient to entitle the holders to that security or right of repayment which the Company might lawfully

Equitable
principle
applicable.

have given them under the actual circumstances of the case if that form had not been adopted. And I think the consistency of the equity allowed in the *Cork and Youghal Railway Co.'s Case* with the general rule of law that persons who have no borrowing powers cannot, by borrowing, contract debts to the lenders, may be shown in this way. The test is: has the transaction really added to the liabilities of the Company? If the amount of the Company's liabilities remains in substance unchanged, but there is, merely for the convenience of payment, a change of the creditor, there is no substantial borrowing in the result, so far as relates to the position of the Company. Regarded in that light, it is consistent with the general principle of equity, that those who pay legitimate demands which they are bound in some way or other to meet, and have had the benefit of other people's money advanced to them for that purpose, shall not retain that benefit so as, in substance, to make these other people pay their debts. I take that to be a principle sufficiently sound in equity; and if the result is that by the transaction which assumes the shape of an advance or loan, nothing is really added to the liabilities of the Company, there has been no real transgression of the principle on which they are prohibited from borrowing." See further *IN RE Guardian Permanent Benefit Building Society*, 23 Ch. Div. 440; 9 Ap. Ca. 519; and *Chapple v. Brunswick Building Society*, 5 C. P. D. 331; 6 Q.B. Div. 696; and *Yorkshire Railway Wagon Co. v. Maclure*, 19 Ch. D. 478; these last two cases show that although as against the Company a borrowing which is unauthorized is void, still the lenders have a remedy against the directors who sanctioned the same.

A refusal to allow the solicitor of a shareholder to inspect the register of mortgages is a refusal to the shareholder himself, *IN RE Credit Co.* 11 Ch. Div. 256.

69. Every limited banking Company, and every insurance Company, and deposit, provident or benefit Society under this Act, shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked D in the first schedule hereto, or as near thereto as circumstances will admit; and a copy of such statement shall be put up in a conspicuous place in the registered office of the Company and in every branch office or place where the business of the Company is carried on.

Certain Companies to publish statement entered in schedule.

If default is made in compliance with the provisions of this section, the Company shall be liable to a penalty not exceeding fifty rupees for every day during which such default continues; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Every member and every creditor of any Company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding eight annas.

Sec. 44 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 44 of the Indian Companies' Act X. of 1866, *verbatim*, fifty rupees and eight annas being substituted for 'five pounds' and 'six pence' in the English Act.

Cf. 22 Vic., c. 91, s. 4.

List of directors to be sent to Registrar.

70. Every Company under this Act and not having a capital divided into shares⁽ⁱ⁾ shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the Registrar of joint stock Companies a copy of such register, and shall from time to time notify to the Registrar any change that takes place in such directors or managers.

Sec. 45 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 45 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) As to the annual list of the members of other Companies, see sec. 48 *supra*.

Penalty on Company not keeping register of directors.

71. If any Company under this Act and not having a capital divided into shares makes default in keeping a register of its directors or managers, or in sending a copy of such register to the Registrar in compliance with the foregoing rules, or in notifying to the Registrar any change that takes place in such directors or managers, such delinquent Company shall incur a penalty not exceeding one hundred rupees for every day during which such default continues; and every director or manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Sec. 46 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 46 of the Indian Companies' Act X. of 1866, substituting "one hundred rupees" for "five pounds."

Promissory notes, bills of exchange, and hundis.

72. A promissory note, bill of exchange or hundi shall be deemed to have been made, drawn, accepted or endorsed on behalf of any Company under this Act, if made, drawn, accepted or endorsed in the name of the Company by any person acting under the authority of the Company, or if made, drawn, accepted or endorsed by or on behalf or on account of the Company by any person acting under the authority of the Company.

Sec. 47 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 47 of the Indian Companies' Act X. of 1866, *verbatim*, save that the word "hundis" is inserted in the Indian Act.

Cf. Act XIX. of 1857 s. 47; as to contracts by a Company, see sec. 67, *supra*.

"Whether or not a note or bill must, on the face of it, *express* that it is made, accepted or endorsed " by or on behalf or on account of " the Company, yet there must be on the face of it that which shows that it was so made, accepted, or endorsed, and which excludes the inference that it was made, accepted, or endorsed by or on behalf or on account of any other person. A bill or note may be in a certain sense on behalf or on account of, a Company, though there is upon its face no reference to the Company even in the form of a description of the persons, who actually make, accept, or endorse being directors or secretary. As between such persons and the Company such a bill or note may well be on behalf or on account of the Company; but it is not, therefore, so as between the Company and third parties. So far as third parties are concerned, a Company under the Act can be made liable on a bill or note only when such bill or note on the face of it expresses that it was made, accepted or endorsed by or on behalf or on account of the Company, or where that fact appears by necessary inference from what the face of the instrument itself shows. The addition to the signatures of individuals as makers, drawers, acceptors, or endorsers of notes or bills of their description as director or directors, secretary, treasurer and agent of a Company is not considered to raise such inference, as it does not exclude the supposition that, though described as directors, they intended to make themselves personally liable to the holders of the instrument, though as between themselves and the Company they may be entitled to be indemnified for anything they may have paid on account of the Company in respect of such notes or bills." So held per *Green, J.* IN RE *The New Fleming S. & W. Co.*, 1 L. R. 3 Bom. 439, where *Dutton v. Marsh*, L. R. 6. Q. B. 361 was followed (and see the comments by that learned Judge on *Okell v. Charles*, 34 T. L. 822, at p. 448.) The judgment of *Green, J.* was affirmed on appeal, 1 L. R. 4 Bom. 275.

This case was followed in IN RE *The Narsi S. and W. Co.*, 1 L. R. 5 Bom. 92, where upon a claim being sent in by the National Bank in the liquidation of the Narsi Company the latter were held not liable as drawers of the bill in question, but were liable upon the ground that they by their directors had sold a bill on behalf of the company as a bill on which the Company was liable, but which turned out to be one on which the company was not liable, and had consequently been guilty of a misrepresentation within the meaning of secs. 18 and 19 of the Contract Act IX. of 1872.

Where the plaintiff advanced money upon the security of the machinery and tools of the Company under an agreement expressed to be made between the T. Company of the one part and the plaintiff on the other, which was signed by three of the directors (defendants) but not sealed with the seal of the Company nor counter-signed by the secretary, pursuant to the articles of association, nor did the defendants express that they signed on behalf of the Company, it was held that the defendants were personally liable to the plaintiff for the monies advanced, notwithstanding the heading of the agreement which must be rejected, the agreement not having been signed in a form binding on the Company. *McCullin v. Gilpin*, 5 Q. B. D. 390, affirmed, 6 Q. B. Div. 516.

"If," said *Lush, J.* (5 Q. B. D.) at p. 393, "the defendants had so executed this agreement as to make it in form the Company's contract, the plaintiff would have been justified in assuming that they received the requisite authority of the Company in general meeting, and the defendants would have been then in the same position as the defendants

in *Richardson v. Williamson* (L. R. 6, Q. B. 276). But the agreement does not contain or imply any such representation, inasmuch as it does not profess to be an assignment by the Company, but only by the directors as such." The case was affirmed by the Court of Appeal 6 Q. B. Div. 516, after hearing parol evidence to explain the ambiguity of the agreement.

See further as to the personal liability of the directors of a Company which had no power to accept bills, who had accepted a bill of exchange "for and on behalf of" the Company, *The West London Commercial Bank v. Kitson and others*, 12 Q. B. D. 157. Where however the two learned Judges who heard the case (*Day and A. L. Smith, J. J.*) differed as to the grounds upon which they held the directors liable; *Day, J.* holding the defendants liable on the ground that as between themselves and the plaintiffs the defendants had been guilty of constructive fraud by issuing a bill which contained an untrue statement that they were authorized to accept it on behalf of the Company, or upon the ground that, apart from fraud, they were, as between themselves and a *bona fide* indorsee for value, precluded from denying the truth of any statement contained in their acceptance of a negotiable instrument. *A. L. Smith, J.* on the ground that there was evidence of an implied contract by the defendants with the plaintiffs that they were authorized to accept the bill on behalf of the Company. Affirmed 13 Q. B. Div. 360.

An article of Association which empowered the agents of a Company "to draw, endorse and negotiate on behalf of the Company all such cheques, promissory notes, &c. as should be necessary for enabling them to carry on the business of the Company," was held not to empower them to accept bills drawn on the Company with a view that the proceeds should be placed to their general account, and that from that general account advances should be, from time to time, made to the Company. *Oriental Bank v. The Baree Tea Co.* 13 Calc. Rep. 412.

Prohibition
against
carrying on
business
with less
than seven
members.

73. If any Company under this Act carries on business when the number of its members is less than seven, for a period of six months after the number has been so reduced, every person who is a member of such Company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debt of the Company contracted during such time, and may be sued for the same without the joinder in the suit of any other member.

Sec. 48 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 48 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See sec. 128, clause (c) *post*.

Cf. Sec. 43 of Act XIX. of 1857.

Provisions for Protection of Members.

General
meeting of
Company.

74. A general meeting⁽ⁱ⁾ of every Company under this Act shall be held once at the least in every year.

A balance-sheet shall be made out and filed with the Registrar of joint stock Companies within twelve months after the Company has been registered, and once at least in every year afterwards within twelve months from the filing of the balance-sheet immediately preceding; and such balance-sheet shall contain a summary of the property and liabilities of the Company, arranged under the heads appearing in the form annexed to table A in the first schedule hereto, or as near thereto as circumstances admit.

Balance-sheet.

And once at the least in every year the accounts of the Company shall be examined and the correctness of the last balance-sheet and its conformity with the law ascertained and certified by one or more auditor or auditors.

Audit.

No balance-sheet shall be filed with the Registrar unless or until its correctness and conformity with the law have been so ascertained and certified, and it has been laid before and adopted by the Company in general meeting.

If default is made in compliance with any of the provisions of this section, every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall be liable to a penalty of one thousand rupees.

The first paragraph of the section contains the whole of sec. 49 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and corresponds with the first paragraph of sec. 49 of the Indian Companies' Act X. of 1866, which continued as follows: "a balance-sheet shall be made out in every year, and laid before the Company in General Meeting, and filed with the Registrar of joint stock Companies, and such balance-sheet shall contain, &c.," as in the present section; save the last paragraph but one, which is new.

The section in X. of 1866 adapted, is from Act XIX. of 1857, ss. 30-37.

Mr. Whitley Stokes (p. 23 of the Companies' Act X. of 1866) says, "it was thought desirable to follow the example of the framers of Act XIX. of 1857, and make compulsory the preparation and filing of an annual balance-sheet and the annual examination of the Companies' accounts."

(i) Sched. I., table A (29)—(43).

The first general meeting must be held within six months after the memorandum of association has been registered, sec. 75 *post*.

The word "year" means the period of time commencing on the 1st January and ending on the 31st December, and not the period of twelve months commencing from the day of registration of a Company. *Gibson v. Barton*, L. R. 10, Q. B. 329.

Meetings.

Company to
hold meeting
within six
months after
registration.

75. Every Company formed under this Act after the commencement of this Act shall hold a general meeting within six months after its memorandum of association is registered: and, if such meeting is not held, the Company shall be liable to a penalty not exceeding fifty rupees a day for every day after the expiration of such six months, until the meeting is held; and every director or manager of the Company and every subscriber of the memorandum of association who knowingly authorizes or permits such default shall be liable to the same penalty.

Sec. 39 of the English Companies' Act (30 and 31 Vic., c. 131), 1867, save that the English Act provides that a meeting be held within *four* months after registration; and has 'five pounds' instead of 'fifty rupees.'

In some of the copies of this Act the word "four" is substituted for "six," in the sentence, "after the expiration of such six months," an obvious error on the part of the printer.

See table A art. (29) *post*.

Power to
alter regula-
tions by
special
resolution.

76. Subject to the provisions of this Act and to the conditions contained in the memorandum of association(i), any Company formed under this Act or the Indian Companies' Act, 1866, may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned(ii), alter all or any of the regulations of the Company contained in the articles of association(iii), or in the table marked A in the first schedule, where such table is applicable to the Company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the Company.

Any regulations so made by special resolution shall be deemed to be regulations of the Company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution(iv).

Power to
make liability
of directors
unlimited.

Any limited Company formed under this Act or the Indian Companies' Act, 1866, may by a special resolution(v) if authorized to do so by its regulations as originally framed or as altered by special resolution,(vi) from time to time modify the conditions contained in its memorandum of association(vii) so far as to render

unlimited, from and after the date of such resolution, the liability of its directors or managers, or of the managing director. Such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in or annexed to every copy of the memorandum of association which is issued after the passing of the resolution.

The first two paragraphs correspond with sec. 50 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 50 of the Indian Companies' Act (X. of 1866), save that the words "or the Indian Companies' Act, 1866," are inserted in the present section.

The third paragraph corresponds with sec. 8 of the English Companies' Act (30 and 31 Vic., c. 131), 1867, which section concluded however as follows: "and any default in this respect shall be deemed to be a default in complying with the provisions of the fifty-fourth section of the Principal Act, and shall be punished accordingly."

- (i) Secs. 6—12 *supra*.
- (ii) Sec. 77 *post*.
- (iii) Secs. 37—39 *supra*.
- (iv) Secs. 221, 240, as to Companies not formed under this Act.
- (v) Sec. 77 *post*.
- (vi) Sec. 77 *post*.
- (vii) Sec. 12 *supra*.

"The power here given of altering the articles cannot be extended so as to authorize an alteration in the memorandum of association, by the introduction into the articles of a clause so providing."—Buckley, 4th ed., p. 158.

But a Company cannot contract itself out of the provisions of the section by a clause in its articles, excepting any regulation contained in the articles from the operation of the section, and a resolution of a general meeting of the Company to alter or modify such regulation will be valid. *Walker v. London Tramways Co.*, 12 Ch. D., 705.

Nor can the articles of association of a Company, except in the cases provided for by section 12 (see *supra*) modify the memorandum of association in any of the particulars required by the Act to be stated in the memorandum. *Guinness v. Lind Corporation of Ireland*, 22 Ch. Div., 349.

As to reduction of capital by special resolution see sec. 13; a subdivision of shares into shares of smaller amount may be made by special resolution sec. 24; arrangements may be made by special resolution for some shares being fully paid up and others not, sec. 27.

By sec. 80 *post*, copies of special resolutions must be embodied in, or annexed to, the articles of association.

77. A resolution passed by a Company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the Company for the time being entitled, according to the regula-

Definition of
"special
resolution."

tions of the Company, to vote, as may be present in person or by proxy (in cases where by the regulations of the Company proxies are allowed) at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the Company, to vote, as may be present in person or by proxy at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month, from the date of the meeting at which such resolution was first passed.

At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same.

Notice of any meeting shall, for the purposes of this section, be deemed to be duly given, and the meeting to be duly held whenever such notice is given and meeting held in manner prescribed by the regulations of the Company.

In computing the majority under this section when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the Company.

Sec. 51 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 51 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. also sec. 39 of Act XIX. of 1857. As to an "extraordinary resolution" see sec. 173, *post*.

IN *RE Horbury Bridge Coal, Iron and Waggon Co.*, 11 Ch. Div., 109. When a poll is not demanded, the voting must be by show of hands without counting shares. Per *Jessel, M. R.*, "In the case of a special meeting, what is to be done when a poll is demanded is not to be done when a poll is not demanded."

Table B to Act XIX. of 1857, cl. (29) provides, that "seven days' notice at the least, specifying the place, the time, the hour of meeting, and the purpose for which any general meeting is to be held, shall be given by advertisement, or in such other manner (if any) as may be prescribed by the Company." (*Appendix, post*.)

And see the cases cited at p. 161, Buckley 4th ed. upon the corresponding art. 28 of table B of 19 & 20 Vic., c. 47, 1856.

As to " notices " and what they should state, &c., see Buckley, 4th ed., Notices, pp. 161—163 and the cases there cited. And see *IN RE Indian Zoedone Co.*, 26 Ch. Div. 70, as to the Chairman's powers and authority.

In *Isle of Wight Ry. Co. v. Tahourdin*, 25 Ch. Div. 320; a notice of a proposal to remove " any of the directors " was held sufficiently distinct. The plaintiff Company in that case were subject to the provisions of the Companies' Clauses Act (8 and 9 Vic., c. 16), 1845.

If the articles of association of a Company contain no power to remove directors before the expiration of their period of office, but authorize the shareholders by special resolution to alter any of the articles, there must be a separate special resolution altering the articles so as to give power to remove directors before a resolution can be passed to remove any of them. *Imperial Hydropathic Hotel Co., Blackpool v. Hampson*, 23 Ch. Div. 1. Discussed and explained in *Taylor v. Pilsen, Joel Light Co.* 27 Ch. D. 268.

Where one of the articles of association of a Company required that the instruments appointing proxies should be attested, unattested proxies were rejected, *Harben v. Phillips*, 23 Ch. Div. 14. See this case further upon the question as to what is an effectual exercise of the power given by the articles of a Company to remove its directors, and as to proxies generally see per *Bowen, L. J.*, *ibid.* p. 35.

78. In default of any regulations as to voting(i), Provision where no regulation as to meetings. any member shall have one vote, and, in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned of which seven days' notice(ii) in writing has been served on every member in manner in which notices are required to be served by the table marked A in the first schedule hereto(iii).

In default of any regulations as to the persons to summon meetings, five members shall be competent to summon the same, and, in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside(iv).

Sec. 52 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 52 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Sch. I., table A (44)—(51).

(ii) Sch. I., table A (35).

(iii) Sch. I., table A (95)—(97).

(iv) Sch. I., table A (29)—(43).

As to its not being necessary to serve notices of general meetings on members resident out of the jurisdiction, see Buckley, 4th ed. p. 163 and the case cited there (note f.).

79. A copy of every special resolution that is passed by any Company under this Act shall be printed and forwarded to the Registrar of joint stock Companies and be recorded by him. Registration of special resolutions.

If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution,

the Company shall incur a penalty not exceeding twenty rupees for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Sec. 53 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, which provides a penalty of "two pounds" instead of "twenty rupees"; and sec. 53 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 40 of Act XIX. of 1857.

Copies of special resolutions to be embodied in articles of association.

80. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution. Where no articles of association have been registered, a copy of every special resolution shall be forwarded in print to any member requesting the same on payment of one rupee or such less sum as the Company may direct.

If any Company makes default in complying with the provisions of this section or section seventy-six, it shall incur a penalty not exceeding twenty rupees for each copy in respect of which such default is made; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Sec. 54 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, which provides a fee of "one shilling" instead of "one rupee" and a penalty of "one pound" instead of "twenty rupees"; and sec. 54 of the Indian Companies' Act X. of 1866, *verbatim*, save that the words "or section seventy-six" are inserted in the present section.

Cf. sec. 41 of Act XIX. of 1857.

See sec. 76 *supra* (last paragraph), as to embodying or annexing the special resolution there referred to in or to the memorandum of association.

Execution of deeds abroad.

81. Any Company under this Act may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in British India; and every deed signed by such attorney on

behalf of the Company and under his seal shall be binding on the Company and have the same effect as if it were under the common seal of the Company.

Sec. 55 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 55 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 46 of Act XIX. of 1857.

See the Powers of Attorney (Indian) Act VII. of 1882.

82. The Local Government may appoint one or more competent inspectors to examine into the affairs of any Company under this Act, and to report thereon in such manner as the Local Government may direct upon the applications following (that is to say :—

Examination of affairs of Company by inspectors.

(a) In the case of a banking or any other Company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the Company for the time being issued :

(b) In case of any Company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the Company as members.

Sec. 56 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, which substitutes "Board of Trade" for "Local Government," and in the case of banking Companies provides for the application being made by members "holding not less than *one-third* part of the whole shares," &c.; and sec. 56 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 48 of Act XIX. of 1857.

"The power given by this section is unfettered, but will doubtless be exercised with the greatest caution, and inspection will only be allowed in cases where the applicant can bring forward strong *prima facie* evidence to show that the Company is in difficulties, and that the true character of such difficulties is concealed by the governing body. Looking too, at the Company's powers (see sec. 86 *post*) to appoint inspectors with the same authority as inspectors appointed by Government, a minority will scarcely be justified in applying to Government, unless they have previously failed in obtaining an inspection by officers appointed by the Company, or can show that such officers have neglected their duties." [Thring, I. 103.]

83. The application shall be supported by such evidence as the Local Government may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same.

Application for inspection to be supported by evidence.

The Local Government may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

Sec. 57 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting "Local Government" for "Board of Trade"; and sec. 57 of the Indian Companies' Act. X. of 1866, *verbatim*.

Inspection of books.

84. It shall be the duty of all officers and agents of the Company to produce for the examination of the inspectors all books and documents in their custody or power.

Any inspector may examine upon oath the officers and agents of the Company in relation to its business.

If any such officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the Company, he shall incur a penalty not exceeding one hundred rupees in respect of each such offence.

Sec. 58 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 58 of the Indian Companies' Act X. of 1866, *verbatim*, save that the English Act provides a penalty of "five pounds" for "one hundred rupees."

Cf. sec. 49 of Act. XIX. of 1857.

As to inspection of the books of account by the members of the Company see sch. I., table A., art (78) *post*.

Result of examination how dealt with.

85. Upon the conclusion of the examination, the inspectors shall report their opinions to the Local Government. Such report shall be written or printed as the Local Government directs.

A copy shall be forwarded by the Local Government to the registered office of the Company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or to any one or more of them.

All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Local Government shall direct the same to be paid out of the assets of the Company, which the Local Government is hereby authorized to do.

Sec. 59 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting "Local Government" for "Board of Trade"; and sec. 59 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 50 of Act XIX. of 1857.

86. Any Company under this Act may, by a special resolution(i), appoint inspectors for the purpose of examining into the affairs of the Company. Power of Company to appoint inspectors.

The inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Local Government(ii), with this exception, that instead of making their report to the Local Government, they shall make the same in such manner and to such persons as the Company in general meeting directs.

The officers and agents of the Company shall incur the same penalties in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspectors had been appointed by the Local Government.

Sec. 60 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting "Local Government" for "Board of Trade"; and sec. 60 of the Indian Companies' Act X. of 1866.

(i) Sec. 77 *supra*.

(ii) Sec. 82-85 *supra*.

Cf. sec. 51 of Act XIX. of 1857.

87. A copy of the report of any inspectors appointed under this Act authenticated by the seal of the Company into whose affairs they have made inspection, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in such report. Report of inspectors to be evidence.

Sec. 61 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 61 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 52 of Act XIX. of 1857.

88. Every prospectus of a Company, and every notice inviting persons to subscribe for shares in any joint stock Company, shall specify the dates and the names of the parties to any agreement enforceable by law which has been entered into by the Company, or the promoters, directors, or trustees thereof, Prospectus, &c., to specify dates and names of parties to certain prior contracts,

before the issue of such prospectus or notice (whether subject to adoption by the directors, or the Company, or otherwise), and which might reasonably influence a person in determining whether he would or would not become a shareholder in the Company; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors and officers of the Company knowingly issuing the same, as regards any person taking shares in the Company on the faith of such prospectus, unless he has had notice of such contract.

This section corresponds with the well-known and much-discussed section 38 in the English Companies' Act (30 and 31 Vic., c. 131), 1867, *verbatim*, save and except the words "and which might reasonably influence a person in determining whether he would or would not become a shareholder in the Company," which it is presumed are inserted in the present Act to put some reasonable limit on the "wonderful comprehensiveness" of the section in the English Act.

See Mr. Buckley's note thereto, 4th ed., pp. 504, *et seqq.*

It is difficult to understand why this section occupies its present position in this Act; it would more naturally have followed sec. 67 *supra*.

The "singular omission" of the words "or notice" (pointed out by Mr. Buckley, 3rd ed., p. 457) after the words "taking shares in the Company on the faith of such prospectus" is continued in the present section.

For the judicial interpretations of the section, see the following cases:—

Twyer v. Grant, 2 C. P. D., 469 and 491; *Sullivan v. Metcalfe*, 5 C. P. D., 455.

As to what contracts are *not* included in it, see *Gover's Case*, 1 Ch. D. 182; *Craig v. Phillips*, 3 Ch. D. 722; and see 7 Ch. Div. 249; and *Entwistle v. Hodgkinson*, W. N. 1877, 46.

As to the meaning of "promoters," see *Emma Mining Co. v. Grant*, 11 Ch. D., 918; *Emma Silver Mining Co. v. Lewis*, 4 C. P. D. 396; *Sombrero Phosphate Co. v. Erlanger*, 5 C. P. Div. 73; 3 App. Ca. 1218; and *Whaley Bridge Printing Co. v. Green*, 5 Q. B. D. 109.

As to what is necessary to enable the plaintiff in an action for *deceit* who has taken shares upon the faith of a prospectus to succeed, see the cases cited *supra* in note to sec. 58.

The words "and which might reasonably influence a person," &c., practically embody the decisions of *Brett, L. J. Cockburn, C. J., Coleridge, C. J., and Lindley and Grose, J. J.*, in the following cases, respectively, *Gover's Case*, 1 Ch. Div., 200; *Twyer v. Grant*, 2 C. P. Div. 546, 539; and *Twyer v. Grant*, 2 C. P. D. 485, and Mr. Buckley's Summary, at p. 506-507, 4th ed.

The following are the latest cases on the section:—

In *Sullivan v. Metcalfe*, 5 C. P. Div. 455, the plaintiff sued the defendants, who were the directors and promoters of the Diamond Fuel Co., to recover from them the price of the shares in that Company for which he had subscribed, and upon demurrer it was held (*Bramwell, L. J., diss.*,

that the defendants were liable, inasmuch as the contracts with reference to the disposal of the purchase-money of the patent which had been bought by the Company ought to have been specified in the prospectus, pursuant to the 38th section of the Companies' Act, 1867. *Thesiger L. J.*, at p. 461, says:—"I am content . . . to adopt the view that every contract relating to the formation of a Company, or to its capital, property, or business when formed, or to the position, pecuniary, or otherwise, in regard to the Company, or its promoters or vendors, of the directors or other officers of the Company, and which is material to be made known to persons invited to take shares in order to enable them to form a judgment as to the policy of so doing, is a contract within the meaning of sec. 38, and as such must be disclosed under the circumstances and to the extent which the section points out, provided that one of the parties to it is, at its date, or subsequently becomes a promoter, director, or trustee of the Company;" and per *Baggallay, L. J.*, p. 465, "upon the construction then of the language of the section, I am prepared to hold that every contract, which upon a reasonable construction of its purport and effect would assist a person in determining whether he would become a shareholder in the Company is a contract within the 38th section." *Bramwell, L. J.*, adhering to the opinion formerly expressed by himself (in *Twyer v. Grant*, 2 C. P. Div. 469), at p. 480, says:—"The question is whether the agreements between vendors and their agents for the division of the price, or plunder, if plunder it was, are contracts within the section. I say no. The Company was neither richer nor poorer on account of the way the spoil was divided among the spoilers. It may have been a folly or dishonesty to give so much if the patent was not worth it; or if it was, it may have been a folly or necessity for the vendors to take so little; but either way, the Company, I repeat, was neither richer nor poorer on account of the way the price agreed on was divided." With regard to the words "taking shares on the faith of such prospectus," *Thesiger, L. J.* says, *ibid.* p. 460, "giving a reasonable meaning to this not very happily worded expression, no person can be said to have taken shares on the faith of a prospectus, except a person who can prove to the satisfaction of a jury that he took his shares on the faith of there being no such contract as that omitted to be disclosed, and that if such contract had been disclosed to him he would not have taken his shares."

The plaintiff in an action of deceit must prove that he relied upon the false statement complained of, and if a statement by which plaintiff says he has been deceived is ambiguous, he is bound to state the meaning which he attached to it, and cannot leave the Court to put a meaning upon it. But a trivial statement, though untrue to the knowledge of the defendant, which, in the opinion of the Court, could not have influenced the plaintiff, will not support the action. *Smith v. Chadwick*, 20 Ch. Div. 27, where it was also held that it must depend on the circumstances of the case whether improperly placing a person's name on the list of directors in the prospectus is a material misstatement. Affirmed 9 Ap. Ca. 187.

Notices.

89. Any summons, notice, order or other document required to be served upon the Company may be served by leaving the same, or sending it through the post by a registered letter addressed to the Company, at their registered office(i); and any notice to the Registrar of joint stock Companies may be served by sending it to him through the post by a registered letter, or by delivering it to him or by leaving it for him at his office.

Service of
notices on
Company.

The first paragraph corresponds with sec. 62 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, which ends at the words "their registered office," and has "prepaid" for "registered" letter. The whole section corresponds *verbatim* with sec. 62 of the Indian Companies' Act X. of 1866.

(i) See sec. 63. *supra*.

Cf. also sec. 53 of Act XIX. of 1857 which corresponded with sec. 53 of the English Act of 1856, 19 and 20 Vic., c. 45 (*Joint Stock Companies' Act*) in which sections however the words "order or other document" were not included. They appear to have been introduced on account of the decision in *Towne v. London &c. Steam Ship Co.*, 23 L. J. C. P. 217, where it was held that the section last referred to, did not apply to a writ of summons.

Clauses (95)–(97) of table A, sch. I, *post*, regulate service by the Company on its shareholders.

As to the service of a winding-up petition see rule 3, *post*, and as to service on contributories and creditors, rule 59 *post* Appendix.

As to service of a writ of summons upon a Company see the Civil Procedure Code XII. of 1882, s. 436, and sec. 17 *post* Appendix.

Rules as to
notices by
letter.

90. Every document to be served by post on the Company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and, in proving service of such document, it shall be sufficient to prove that such document was properly directed, and that it was put as a registered letter into the post office.

Sec. 63 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting "prepaid" for "registered"; and sec. 63 of the Indian Companies' Act X. of 1866 *verbatim*.

Cf. sec. 54 of Act XIX. of 1857.

Authentica-
tion of
notices by
Company.

91. Any summons, notice, order or proceeding requiring authentication by the Company may be signed by any director, secretary or other authorized officer of the Company, and need not be under the common seal of the Company; and the same may be in writing or in print, or partly in writing and partly in print.

Sec. 64 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 64 of the Indian Companies' Act X. of 1866.

Cf. sec. 55 of Act XIX. of 1857.

In the English Companies' Act (25 and 26 Vic., c. 89) 1862, here follow two sections 65 and 66, providing for the recovery and application of penalties respectively, cf. sec. 56 of Act XIX. of 1857. The procedure in India is directed by s. 252 *post*.

Legal Proceedings.

92. Every Company under this Act shall cause minutes of all resolutions and proceedings of general meetings(i) of the Company, and of the directors or managers of the Company in cases where there are directors or managers, to be duly entered in books(ii) to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings.

Evidence of
proceedings
at meetings.

Until the contrary is proved, every general meeting of the Company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had to have been duly passed and had, and all appointments of directors, managers or liquidators shall be deemed to be valid, and all acts done by such directors, managers or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications(iii).

Explanation.—Nothing in this section shall be deemed to give validity to acts done by a liquidator after his appointment has been shown to be invalid.

Sec. 67 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 65 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Sch. I. table A (29)—(43).

(ii) Sec. 198 *post*.

(iii) Sch. I. table A (55)—(71).

Cf. sec 44 of Act XIX. of 1857.

The *explanation* is derived from *IN RE Bridport Old Brewery Co.*, L. R. 2 Ch. 191—194, and *quære* whether the words "director, manager, or" should not be inserted before liquidator, see Buckley, 4th ed. p. 169.

Where the articles of association provided that the number of directors was to be not less than three, and also that any casual vacancy occurring in the board might be filled up by the board, and the continuing board might act notwithstanding any vacancy in their body, and, upon a casual vacancy having occurred within the meaning of the articles, the defendant had shares allotted to him by two remaining directors only, who resolved that the defendant should be appointed a director; and the defendant afterwards attended a meeting of the directors, confirmed the allotment to himself, and joined in passing a resolution, that the shares allotted to himself should be paid up in full forthwith, it was held

that the defendant was liable to pay the amount of the shares allotted to him, *York Tramways Co. v. Willows*, 8 Q. B. Div. 685. The defendant was also held to be estopped under the circumstances of the case from denying his liability. See on this point *supra*.

Where, however, the articles of association of a Company provided that "the business of the Company shall be conducted by not less than" a specified number of directors, those words were held to be imperative and not merely directory, and therefore a call made or a forfeiture of shares declared by less than the specified number of directors was invalid. IN RE *Alma Spinning Co.*, *Bottomley's Case*, 16 Ch. D. 681, when the cases of *Thames Haven Docks &c. Co. v. Rose*, 4 Man. and Gr. 552 and *Kirk v. Bell*, 16 Q. B. 290 are considered by *Jessel, M. R.* See *Bottomley's case* further referred to *post*. The above cases are, of course, distinguishable from those aimed at by this section, see Buckley, 4th ed. p. 169.

"The Chairman of the next succeeding meeting." These words meet the difficulty which arose in *Cornwall &c. Co. v. Bennett*, 6 Jur. N. S. 539; as to minutes signed by the Chairman being *prima facie* evidence of the facts stated therein; see IN RE *Indian Zoedone Co.*, 26 Ch. Div. 70.

In the English Act here follows a section, 68, relating to the jurisdiction of the Vice-Warden of the Stannaries.

Provision as to costs in suits brought by certain limited Companies.

93. Where a limited Company is plaintiff in any suit, if it appears from the evidence adduced that there is reason to believe that, if the defendant be successful in his defence, the assets of the Company will be insufficient to pay his costs, any Judge having jurisdiction in the matter may require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Sec. 69 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 66 of the Indian Companies' Act X. of 1866, which however are as follows: "Where a limited Company is plaintiff [or pursuer] in any [action], suit, [or other legal proceeding], any Judge having jurisdiction may, if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence the assets of the Company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given." The words in brackets are in the English Act alone. The above section in those Acts corresponds with 20 and 21 Vic., c. 14, s. 24, save that the words "if it appears by any credible testimony" are substituted for "if it be proved to his satisfaction" in that Act.

Chap. XXIV. of Act XIV. (Civil Procedure Code) 1882 provides for security for costs generally, and the amount to be directed is discretionary; and see *Palmer's Precedents*, 3rd ed. p. 403.

Security for costs will be ordered to be given by a Company which is appealing from a winding-up order and has not joined any one personally responsible for costs, see IN RE *Diamond Fuel Co.*, 13 Ch. Div., 400, 412. As to the time for making the application, see *Lydney and Wiggpool Iron Ore Co. v. Bird*, 23 Ch. D. 358.

94. In any suit brought by the Company against any member(i) to recover any call or other monies due from such member in his character of member, it shall be sufficient to allege that the defendant is a member of the Company, and is indebted to the Company in respect of a call made or other monies due whereby a suit has accrued to the Company.

Plaint in
suits against
members.

Sec. 70 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 67 of the Indian Companies' Act No. of 1866, *verbatim*.

(i) Sec. 45, *supra*.

See sch. I. table A (4)–(7) as to calls to be made on shares, &c. *post*.

As to registering a transfer at the request of the transferor, see sec. 29, *supra*.

"The form of declaration given by the Companies' Clauses Consolidation Act (8 Vic., c. 16 s. 26), is nearly the same as the above. On that form it was held that the allegation that the defendant is the holder of shares means that he was the holder at the time the call was made." Shelford on Joint Stock Companies, 2nd ed. by Pitcairn and Latham, p. 213. See the cases as to pleading under the above section there collected. See also Bullen and Leake's Precedents of Pleadings, 3rd ed. pp. 140, 559.

As to what plaints in India should contain see Act XIV. (Civil Procedure Code) 1882, Chap. V.

Alteration of Forms.

95. The forms set forth in the second schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer.

Forms to be
used.

The Governor-General in Council may from time to time make such alterations in the tables and forms contained in the first schedule hereto, so that he does not increase the amount of fees payable to the Registrar in the said schedule mentioned, and in the forms in the second schedule, or make such additions to the last-mentioned forms, as he deems requisite.

Governor-General in
Council may
alter forms.

Any such table or form, when altered, shall be published in the *Gazette of India*, and, upon such publication being made, such table or form shall have the same force as if it were included in the schedule to this Act; but no alteration made by the Governor-General in Council in the table marked A contained in the first schedule shall affect any Company registered prior to the date of such alteration,

or repeal, as respects such Company, any portion of such table.

Sec. 71 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting "Board of Trade" and "London Gazette" for "Governor-General in Council" and "Gazette of India" in the present section; and sec. 68 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 57 of Act XIX. of 1857.

Arbitrations.

Power for Companies to refer matters to arbitration.

96. Any Company under this Act may from time to time, by writing under its common seal, agree to refer, and may refer, to arbitration any matter whatsoever in dispute between itself and any other Company or person, and the Companies, parties to the arbitration, may delegate to the person or persons, to whom the reference is made, power to settle any terms, or to determine any matter capable of being lawfully settled or determined by the Companies themselves, or by the directors or other managing body of such Companies.

Sec. 72 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, adding the words "in accordance with the Railway Companies' Arbitration Act, 1859," after "may refer to arbitration"; and sec. 69 of the Indian Companies' Act X. of 1866, *verbatim*.

In the English Companies' Act, 1862, there follows a section (73) whereby the provisions of the Railway Companies' Arbitration Act 1869 (22 and 23 Vic., c. 59) are to apply to Arbitrations under that Act.

In the present Act which follows the Indian Companies' Act X. of 1866, the sections are set out *seriatim*, see *post*.

Power to alter or revoke agreements for reference.

97. The Companies jointly, but not otherwise, from time to time, by writing under their respective common seals, may add to, alter, or revoke any agreement for reference in accordance with this Act theretofore entered into between the Companies, or any of the terms, conditions or stipulations thereof.

Sec. 70 of the Indian Companies' Act X. of 1866, *verbatim*, following sec. 3 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859.

Agreements to be carried into effect.

98. Every reference or agreement in accordance with this Act, except so far as it is from time to time revoked or modified in accordance with this Act, shall bind the Companies, and may and shall be carried into full effect.

Sec. 71 of the Indian Companies' Act X. of 1866, *verbatim*; following sec. 4 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859.

99. Where the Companies agree, the reference shall be made to a single arbitrator. Reference to arbitrator.

Sec. 72 of the Indian Companies' Act X. of 1866, *verbatim*; following sec. 5 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859.

100. Except where the Companies agree that the reference shall be made to a single arbitrator, the reference shall be made as follows, to wit:— Reference to two or more arbitrators.

Where there are two Companies, the reference shall be made to two arbitrators;

Where there are three or more Companies, the reference shall be made to so many arbitrators as there are Companies.

Sec. 73 of the Indian Companies' Act X. of 1866; following sec. 6 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859.

101. Where there are to be two or more arbitrators, every Company shall, by writing under their common seal, appoint one of the arbitrators, and shall give notice in writing thereof to the other Company or Companies. Appointment of arbitrators by Companies.

Sec. 74 of the Indian Companies' Act X. of 1866, *verbatim*; following sec. 7 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859.

102. Where there are to be two or more arbitrators, if any of the Companies fail to appoint an arbitrator within fourteen days after being thereunto requested in writing by the other Company, or by the other Companies, or any of them, on the application of the Companies or any of them, the Local Government, instead of the Company so failing to appoint an arbitrator, may appoint an arbitrator. The arbitrator so appointed shall for the purposes of this Act be deemed to be appointed by the Company so failing. Appointment of arbitrators by Local Government.

Sec. 75 of the Indian Companies' Act X. of 1866, *verbatim*; corresponding with sec. 8 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859, substituting "Local Government" for "Board of Trade" in that Act.

Appointment
of arbitrators
by Com-
panies to
supply
vacancies.

103. Where the reference is made to two or more arbitrators, if before the matters referred to them are determined any arbitrator dies, or becomes incapable or unfit, or for seven consecutive days fails to act as arbitrator, the Company by which he was appointed shall by writing under their common seal appoint an arbitrator in his place.

Sec. 76 of the Indian Companies' Act X. of 1866, *verbatim*; corresponding with sec. 9 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859.

Appointment
of arbitrators
by Local
Government
to supply
vacancies.

104. Where the Company, by which an arbitrator ought to be appointed in the place of the arbitrator so deceased, incapable, unfit or failing to act, fails to make the appointment within fourteen days after being thereunto requested in writing by the other Company, or by the other Companies or any of them, then on the application of the Companies or any of them, the Local Government may appoint an arbitrator.

The arbitrator so appointed shall for the purposes of this Act be deemed to be appointed by the Company so failing.

Sec. 77 of the Indian Companies' Act, 1866, *verbatim*; corresponding with sec. 10 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859; substituting "Local Government" for "Board of Trade" in that Act.

Appointment
of arbitrator
not revocable.

105. When any appointment of an arbitrator is made, the Company making the appointment shall have no power to revoke the same without the previous consent in writing of the other Company or every other Company in writing under their common seal.

Sec. 78 of the Indian Companies' Act X. of 1866, *verbatim*; corresponding with sec. 11 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859.

Appointment
of umpire by
arbitrators.

106. Where two or more arbitrators are appointed, they shall before entering on the business of the reference, appoint by writing under their hands an impartial and qualified person to be their umpire.

Sec. 79 of the Indian Companies' Act, 1866, *verbatim*; corresponding with sec. 12 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859.

107. If the arbitrators do not appoint an umpire within seven days after the reference is made to the arbitrators, then, on the application of the Companies or any of them, the Local Government may appoint an umpire; and the umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators.

Appointment
of umpire
by Local
Government.

Sec. 80 of the Indian Companies' Act X. of 1866; corresponding with sec. 13 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859; substituting "Local Government" for "Board of Trade" in that Act.

108. Where two or more arbitrators are appointed, if before the matters referred to them are determined their umpire dies, or becomes incapable or unfit, or for seven consecutive days fails to act as umpire, the arbitrators shall by writing under their hands appoint an impartial and qualified person to be their umpire in his place.

Appointment
of umpire by
arbitrators to
supply
vacancy.

Sec. 81 of the Indian Companies' Act X. of 1866, *verbatim*; corresponding with sec. 14 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859.

109. If the arbitrators fail to appoint an umpire within seven days after notice in writing to them of the decease, incapacity, unfitness or failure to act of their umpire, then; on the application of the Companies or any of them, the Local Government may appoint an umpire.

Appointment
of umpire
by Local
Government
to supply
vacancy.

The umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators so failing.

Sec. 82 of the Indian Companies' Act X. of 1866, *verbatim*; corresponding with sec. 15 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859; substituting "Local Government" for "Board of Trade" in that Act.

110. Every arbitrator appointed in the place of a preceding arbitrator, and every umpire appointed in the place of a preceding umpire, shall respectively have the like powers and authorities as his respective predecessor.

Succeeding
arbitrators
and umpires
to have
powers of
predecessors.

Sec. 83 of the Indian Companies' Act X. of 1866, *verbatim*; corresponding with sec. 16 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859.

111. Where there are two or more arbitrators, if they do not within such a time as the Companies

Reference to
umpire.

agree on, or, failing such agreement, within thirty days next after the reference is made to the arbitrators, agree on their award thereon then the matters referred to them, or such of those matters as are not then determined, shall stand referred to their umpire.

Sec. 84 of the Indian Companies' Act X. of 1866, *verbatim*; corresponding with sec. 17 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859.

Power for arbitrators, &c., to call for books &c., and examine witnesses on oath.

112. The arbitrator, and the arbitrators, and the umpire respectively may call for the production of any documents or evidence in the possession or power of the Companies respectively, or which they respectively can produce, and which the arbitrator, or the arbitrators or the umpire shall think necessary for determining the matters referred, and may examine the witnesses of the Companies respectively on oath.

Sec. 85 of the Indian Companies' Act X. of 1866, which continued, "or affirmation, and may administer the requisite oath or affirmation"; corresponding with sec. 18 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859.

Procedure in the arbitration.

113. Except where and as the Companies otherwise agree, the arbitrator, and the arbitrators and the umpire respectively may proceed in the business of the reference in such manner as he and they respectively shall think fit.

Sec. 86 of the Indian Companies' Act X. of 1866, *verbatim*; corresponding with sec. 19 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859.

Arbitration may proceed in absence of Companies.

114. The arbitrator, and the arbitrators and the umpire respectively may proceed in the absence of all or any of the Companies in every case in which, after giving notice in that behalf to the Companies respectively, the arbitrator, or the arbitrators or the umpire shall think fit so to proceed.

Sec. 87 of the Indian Companies' Act X. of 1866, *verbatim*; corresponding with sec. 20 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859.

Several awards may be made.

115. The arbitrator, and the arbitrators and umpire respectively may, if he and they respectively think fit, make several awards each on part of the

matters referred, instead of one award on all the matters referred.

Every such award on part of the matters shall for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or, in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on were all the matters referred, and that notwithstanding the other matters or any of them be not then or thereafter awarded on.

Sec. 88 of the Indian Companies' Act X. of 1866, *verbatim*; corresponding with sec. 21 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859.

116. The award of the arbitrator, or of the arbitrators or of the umpire, if made in writing under his or their respective hand or hands and ready to be delivered to the Companies within such a time as the Companies agree on, or failing such agreement within thirty days next after the matters in difference are referred to (as the case may be) the arbitrator, or the arbitrators, or the umpire, shall be binding and conclusive on all the Companies.

Awards made in due time to bind all parties.

Sec. 89 of the Indian Companies' Act X. of 1866, *verbatim*; corresponding with sec. 22 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859.

117. Provided always that (except where and as the Companies otherwise agree) the umpire, from time to time by writing under his hand, may extend the period within which his award is to be made. If it be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period.

Power for umpire to extend period for making his award.

Sec. 90 of the Indian Companies' Act X. of 1866, *verbatim*; corresponding with sec. 23 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859.

118. No award made on any arbitration in accordance with this Act shall be set aside for any irregularity or informality.

Awards not to be set aside for informality.

Sec. 91 of the Indian Companies' Act X. of 1866, *verbatim*; corresponding with sec. 24 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859.

Awards to be obeyed.

119. Except only so far as the Companies bound by any award in accordance with this Act from time to time otherwise agree, all things by every award in accordance with this Act lawfully required to be done, omitted or suffered shall be done, omitted or suffered accordingly.

Sec. 92 of the Indian Companies' Act X. of 1866, *verbatim*; corresponding with sec. 25 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859.

Agreements, arbitrations and awards to have effect.

120. Full effect shall be given by the Courts according to their respective jurisdictions, and by the Companies respectively, and otherwise, to all agreements, references, arbitrations and awards in accordance with this Act; and the performance or observance thereof may, where the Courts think fit, be compelled by any process against the Companies respectively or their respective property that the Courts or any Judge thereof shall direct, and where requisite frame, for the purpose.

Sec. 93 of the Indian Companies' Act X. of 1866, *verbatim*; corresponding with sec. 26 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859, which provides or "distress infinite on the properties of the Companies respectively, or by any other process," &c.

Costs of arbitration and award.

121. Except where and as the Companies otherwise agree, the costs of and attending the arbitration and the award shall be in the discretion of the arbitrator, and the arbitrators and the umpire respectively.

Sec. 94 of the Indian Companies' Act X. of 1866, *verbatim*; corresponding with sec. 27 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859.

Payment of costs.

122. Except where and as the Companies otherwise agree, and if and so far as the award does not otherwise determine, the costs of and attending the arbitration and the award shall be borne and paid by the Companies in equal shares, and in other respects the Companies shall bear their own respective costs.

Sec. 95 of the Indian Companies' Act X. of 1866, *verbatim*; corresponding with sec. 28 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859.

123. On the application of any party interested, the submission to any such arbitration may be filed in the High Court, and an order of reference may be made thereon, with any directions the Court thinks fit; and the provisions of the Code of Civil Procedure shall, so far as the same are applicable, apply to every such order and to all proceedings thereunder.

Submission
to arbitration
to be filed in
Court.

Sec. 96 of the Indian Companies' Act X. of 1866, *verbatim*; corresponding with sec. 29 of the Railway Companies' Arbitration Act (22 and 23 Vic., c. 59), 1859, *mutatis mutandis*.

As to the provisions of the Civil Procedure Code on the point see Chap. XXXVII., secs. 506—526 of Act XIV. of 1852.

PART IV.

WINDING-UP OF COMPANIES AND ASSOCIATIONS

UNDER THIS ACT(i).

Preliminary.

124. The term “contributory” shall mean every person liable to contribute to the assets of a Company under this Act in the event of the same being wound up(ii); it shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory(iii).

Meaning of
“contributory.”

Sec. 74 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 97 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) As to Companies registered under Acts XIX. of 1857. and VII. of 1860, see secs. 221-223 *post*; as to Companies registered but not formed under this Act secs. 240—242 *post*; as to unregistered Companies ss. 243-248 *post*.

(ii) ss. 61 *supra*, 126, 127 *infra*.

(iii) ss. 240 (e) and 244 *post*.

Cf. sec. 64 of Act XIX. of 1857.

See sec. 61 *supra* as to the liability of present and past members of a Company and the cases in the note thereto.

As to what persons the term “contributory” has been held to include—see Buckley, 4th ed., p. 174.

As to what will constitute an election on the part of a shareholder to claim in the winding-up of a Company a rescission of his contract to take shares so as to render him unable to bring a suit for that purpose: see *Cargill v. Bower*, 10 Ch. D., 502.

An effectual surrender of shares operates from the date thereof to discharge the surrenderer from liability as a contributory. *IN RE Dronfield Silkstone Coal Co.*, 17 Ch. Div., 76, *supra*.

See also in the case of an assignment under the articles of association in *IN RE Albion Assurance Society, Brown's case*, 18 Ch. D., 639, even although no other person had been made liable to contribute in the place of the assignor of the policy.

As to the non-liability of a Parsee husband's estate in respect of shares held by his wife who had been accepted by the Company as a shareholder without any fraud or concealment on the part of the husband: see *IN RE London Bombay and Mediterranean Bank*, 18 Ch. D. 581, *supra*.

The resignation of his trusteeship alone does not terminate the liability of a trustee as a contributory: see *Alexander Mitchell's case*, 4 Ap. Ca. 572.

Per Baggallay, L. J., *IN RE Scottish Petroleum Co.*, 23 Ch. Div. 429:—"Every person who has agreed to become a member of a Company, and whose name has been entered on the register of members, is liable as a contributory in the event of the Company being wound up. This is in substance the combined effect of the 23rd, 38th and 74th sections of the Companies' Act, 1862."

In a suit against a contributory who had been described in the balance order (as to which see *post* rule 35 and note thereto) as holding the shares "in his own right," the plaintiffs were not allowed to give evidence that the shares were in fact held by a firm consisting of two persons. *London, Bombay, and Mediterranean Bank v. Bhanji Zutani*, I. L. R. 2 Bom. 116.

As to laches on the part of the vendor in not taking the necessary steps to get his shares transferred from himself rendering him liable as a contributory see *IN RE East Indian Trading Co., Jinnadas Savaklat's Case*, 3 Bom. H. C. O. C. J., and *IN RE The Mercantile Credit and Financial Association ex parte M. R. Dilvi*, 3 Bom. H. C. O. C. J. 125, and as to what constitutes an acceptance of shares, and what is sufficient evidence of registration as a member, *IN RE Alliance Financial Association, Blaney's Case*, 3 Bom. H. C. O. C. J. 106. See these cases respectively more fully set out *supra*.

Nature of
liability of
contributory.

125. The liability of any person to contribute to the assets of a Company under this Act in the event of the same being wound up shall be deemed to create a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned(i), for enforcing such liability; and it shall be lawful, in the case of the insolvency of any contributory, to prove against his estate the estimated value of his liability to future calls, as well as calls already made.

No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes situate outside the towns of Calcutta, Madras and Bombay.

Sec. 75 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, save that after the words "create a debt" there followed "in England and Ireland in the nature of a specialty," and substituting "bankruptcy" for "insolvency"; and sec. 98 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See sec. 151 post.

Cf. also 21 Vic., c. 14, s. 13.

The last paragraph is new. Mr. Stokes, in moving the adoption of the Report of the Select Committee on the Companies' Act, 1882, said (23rd February 1882), with reference to this paragraph:—"This has been held to be the effect of sec. 6 of Act XI. of 1865, but it would be well to have the law on the point expressly stated."

By sec. 243 this section is applicable to unregistered Companies.

"The effect of omitting the words which make the debt a specialty debt appears to be that in administering the estate of a deceased contributory, whether he has or has not retained his English domicile, no distinction will be made between this liability and any other simple contract debt. If so, the law in India stands as it was in England, when *Robinson's Executor's case*, 6 D. M. G. 572, was decided."—(Stokes on the Indian Act X. of 1866). See also *Welland Ry. Co. v. Blake*, 6 H. and N. 415, 30 L. J., Ex. 161, and *supra* p. 28, where the effect of the abolition in India of the distinction between specialty and simple contract debts is referred to; and as to the administration of estates, see Part XXXIV., and especially sec. 282 of the Indian Succession Act, and Chapter VII, especially, sec. 104 of the Probate and Administration Act V. of 1881, and see *Asiatic Banking Corporation v. Amador Viegas*, 8 Bom. H. C. 20, and Henderson's Succession Act, p. 286.

The effect of sec. 40 of the Indian Insolvent Act II., and 12 Vic., c. 21 (*post* appendix), is to apply the provisions of the English Bankruptcy Act, 1869 (32 and 33 Vic., c. 71), and also the English Bankruptcy Act of 1883 (46 and 47 Vic., c. 52), to India as regards the proof of debts under the Indian Act. Proof in case of insolvency of contributory.

In Lindley on Partnership (3rd ed., p. 1218; 4th ed., 1180), it is stated that "under the 31st Section of the Bankruptcy Act, 1869, all the difficulties and distinctions which formerly existed with respect to the proof for calls against the estate of a bankrupt shareholder appear to be removed; and when a shareholder becomes bankrupt, all calls in arrear are provable as debts, and his liability to future calls may be estimated and proved as well when the Company is being wound up as when it is not." Mr. Buckley, however, at p. 178 (4th ed.), submits whether this proposition is consistent with *Furdoonjee's case*, 3rd Ch. D. 264. In that case *The East India Cotton Agency Co., Ltd.*, was registered in England in 1861 under the Joint Stock Companies' Act 1856 (19 and 20 Vic., c. 47). Amongst other shares allotted in India, 100 shares were, in or about 1863, allotted to *Ardasir C. Furdoonjee*, of Bombay. On the 12th October 1866, at a meeting of *Furdoonjee's* creditors held at Bombay under the provisions of Act XXVIII. of 1865 of India, it was resolved that his estate be wound up under the management of trustees; and by an order of the High Court at Bombay dated the 13th October, 1866, it was ordered that the resolutions be confirmed, and the estate wound up under management accordingly. In the statement of the debtor's assets and liabilities, these shares were mentioned as involving a possible liability against his estate. On the 29th July 1867 the Company was ordered to be wound up. On the 10th October 1868 the debtor obtained his order of discharge. It was held by *Bacon, V. C.*, that the liability of the insolvent in respect of the shares was not a debt provable in the insolvency proceedings, and hence not barred by the order of discharge, and the name of the late insolvent was ordered to be put on the list of contributories. The learned Vice-Chancellor treated

the case of *Punnett v. Vinayak Pandurang*, (*infra*) as having proceeded upon the Indian Statute XXVII. of 1865, sec. 24, and consequently considered himself not bound to differ from that case.

In *Punnett v. Vinayak Pandurang*, 9 Bom. H. C. 27, the following was the order of dates:—14th November 1866, Pandurang's estate ordered to be wound up under Act XXVIII. of 1865; 8th August 1867 Pandurang placed on the list of contributories; 26th February 1870 Pandurang's discharge under Act XXVIII. of 1865; 9th November 1871 call made upon Pandurang. It was held that he was not liable in respect of such call. *Westropp, C. J.*, adopts the reasoning of Lindley, J. (*ubi supra*), and at p. 30 and 31 of 9 Bom. H. C., says, "Now Section 40 of the Indian Insolvent Debtors' Act (see appendix *post*), provides that all such debts as might be proved under a fiat of bankruptcy according to the provisions of the 6th Geo. IV., c. 16, or any other statute or statutes then in force, or *thereafter to be passed* relating to bankrupts may be proved under the Indian Insolvent Debtors' Act. The provision in sec. 75 of the English Companies' Act is, in our opinion, an enactment relating to bankruptcy, and a debt falling within the purview of that section is a debt that as provable under a fiat in bankruptcy, is also provable under a petition in insolvency." And after considering the sections of the Indian Act XXVIII. of 1865, he concludes, "That any debt which might be proved under the Indian Insolvent Debtors' Act might also have been proved under Act XXVIII. of 1865," and held that under Act XXVIII. of 1865, the contingent liability of Pandurang to calls in respect of the shares held by him was a matter which might have been estimated and proved, and that the liquidator would have been entitled to dividends in respect of that estimated liability; and further that a call made after an Insolvent trader's discharge was a liability from which he was protected by sec. 24 of Act XXVIII. of 1865. "The liability of a shareholder within the meaning of sec. 75 of the English Act is a liability incurred by him upon becoming a member of the company. His liability is a liability in respect of the contract he thereby enters into, and does not merely arise when a call is made to enforce that contract."

The two cases above cited would appear to be directly conflicting, but the case of *IN RE Mercantile Mutual Marine Association*, 25 Ch. D. 415, supports the decision of the Bombay High Court. In that case *Chitty, J.*, held that the liability in respect of calls of a liquidating member of a Company when the liquidation proceedings commence prior to the winding-up, and are pending at the time of the winding-up, is a debt or liability which is not "incapable of being fairly estimated," and which is therefore provable in the liquidation. When, therefore, under these circumstances, a Company winding-up has failed to carry in a proof in the liquidation proceedings of a member of the Company for calls, and the liquidating member obtains his discharge, he cannot afterwards be placed on the list of contributories. The learned Judge declined to follow *Furdoonjee's case* (3 Ch. D. 264).

But an insolvent, who, after he had obtained his personal discharge under sec. 47 of the Indian Insolvent Act (*post* appendix), continued to hold shares in a Company which was ordered to be wound up after the insolvent's discharge, was held liable to pay calls on his shares. *IN RE The Mercantile Credit and Financial Association, Baba Saheb Damaskar's case*, 8 Bom. H. C. 117. Nor would sec. 24 of Act XXVIII. of 1865 protect him, see *Punnett v. Vinayak Pandurang*, 9 Bom. H. C. 30. It is to be observed that in *Baba Saheb Damaskar's case* (*ubi supra*), the Official Assignee had not elected to take the shares belonging to the insolvent. "The Official Assignee cannot be compelled to take upon himself the burden of an onerous undertaking," per *Bayley, J.*, 8 Bom. H. C. 123; nor does the order of discharge operate as a statutory transfer of the shares to the Official Assignee, *ibid*. See also *Hastie's case*, L. R. 7, Eq. 3; 4 Ch. 294. But *quere*, whether the definition of "liability" in sec. 31 of the English Bankruptcy Act, 1869, is not wide

enough to cover such a case as the one just referred to. And see sec. 37 of the English Bankruptcy Act, 1883.

And see further and consider *Parbury's case*, 30 L. J. Ch. N. S. 513; 7 Jur. N. S. 503; 4 L. T. N. S. 62; 3 De G. F. and J. 80, which is fully set out *infra*.

See on the whole subject Buckley 4th ed. 176—180.

In Lindley on Partnerships, 4th ed., p. 1117, the effect of the following sections of the English Bankruptcy Act, 1869,—sec. 15, which describes what property of the bankrupt is divisible among his creditors; sec. 22 which relates to the possession, &c., of the bankrupt's property by the trustee; sec. 23 which relates to the disclaimer by the trustee of a bankrupt's property; and sec. 31 relating to the proof of debts—is thus given.

1. That shares do not vest in the trustee, so as to make him a shareholder in place of the bankrupt. Cf. *Baba Saheb Damaskar's case*, *supra*, *sed quære*, in India as to the effect of sec. 7 of the Indian Insolvent Act, as to which see per *Turner, L. J.* in *Parbury's case*, 3 De G. F. and J., p. 91.

2. That the trustee can, without the concurrence of the bankrupt, sell and transfer or otherwise dispose of his shares for the benefit of his estate. Cf. ss. 21, 30 and 31 of the Indian Insolvent Act.

3. That this right can only be exercised by the trustee, subject to the same conditions as regards consents, payment of calls in arrear, and the like, as the bankrupt himself would have had to comply with if he had been the transferor.

4. That if the shares cannot be disposed of beneficially for the estate, they may be disclaimed by the trustee, and so got rid of altogether.

5. That inasmuch as under s. 31 [of the English Bankruptcy Act] all calls due and to become due can be proved, the bankrupt when discharged will be free from liability in respect of the shares, whatever the trustee may do with them. Cf. however, *Baba Saheb Damaskar's case*, *Punnett v. Vinayak Pandurang*, *Furdoonjee's case*, and Mr. Buckley's opinion cited *supra*, and *IN RE Mercantile Marine Association*, 25 Ch. D. 415.

6. That practically even calls in arrear will not be proved if the Company has a lien on the shares, and they are worth more than the amount due in respect of them; for the Company will then retain the shares and realise them if not redeemed.

7. That practically calls in arrear will not be proved if the shares are transferred by the trustee; (but it is apprehended that future calls can be proved in this case. If they cannot, the bankrupt may still be liable in some cases as a past member, which evidently is not intended: note to p. 1118) for the Company will look to the transferee for all future calls.

8. That future calls will be proved if the trustee disclaims or does nothing; the amount of injury sustained by the disclaimer being estimated under s. 23 at the amount of the debt which, but for the disclaimer, would be provable under s. 31.

The effect of an order absolute for the discharge of an insolvent under the Indian Insolvent Act was fully considered in *ex parte Parbury*, 30 L. J. Ch. N. S. 513; 7 Jur. N. S. 503; 4 L. T. N. S. 62; 3 De G. F. and J. 80. The order of dates was as follows: 26th May 1849 winding-up order of the Company: 4th June 1853 order *nisi* for the discharge of *Parbury* the insolvent, and a shareholder in the Company, notice whereof was given in the Presidency and London Gazettes; 1st July 1854, order absolute for Insolvent's discharge; 25th March 1868, *Parbury's* name was placed on the list of contributories and on the 9th February 1860 a call was made on him. The Company were not named in the insolvent's schedule as creditors. It was held (*Knight Bruce, L. J. dub.*) as to the effect of this omission) that by the order absolute for his discharge under the Indian insolvent Act, *Parbury* was discharged from all

liability for the debts which the contributories were called upon to pay. The Company had ceased to exist before the insolvency, and no new debts could be incurred; and before the insolvency all the events for which the demand arose had happened, and all the facts necessary to ascertain the proportionate amount to be contributed by *Parbury* were extant and capable of proof. It was further held (*Knight Bruce, L. J. dub.*); that the Indian Insolvent Act does not make the specification in the schedule of the debt or liability a condition precedent to a discharge for the debt or liability, nor is the discharge confined to debts in the schedule. Lastly, it was held that *Parbury* was not liable in respect of the costs of the winding-up, inasmuch as these expenses were only incidental to the debts to be paid, and did not fall upon one who was entirely discharged from these debts. As to the liability of contributories for the costs and expenses of winding-up see sec. 61 *supra* (pp. 53, 54) and note thereto.

Contribu-
tories in case
of death.

126. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned (i), his personal representatives, heirs and devisees shall be liable in due course of administration to contribute to the assets of the Company in discharge of the liability of such deceased contributory; and such personal representatives, heirs and devisees shall be deemed to be contributories accordingly (ii).

Sec. 76 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 99 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Sec. 147 *post*.

(ii) Secs. 148, 154 *post*.

Cf. Act XIX. of 1857, sec. 64.

As to the exoneration and liability respectively in the hands of a legatee of stock specifically bequeathed see sec. 157 of the Indian Succession Act X. of 1865 and illustrations thereto; and the note thereto in *Henderson*, p. 187.

Petition of
representatives.

Per *Earl Cairns, L. C.* in *Buchan's case*, 4 Ap. Ch. 549, 538. An executor whose testator has held shares in a Joint Stock Company has generally one of two courses open to him. He may have the shares transferred into his own name, and become to all intents and purposes a partner in the Company. He may, on the other hand, not wish to have the shares transferred into his name, and he ought in that case to have a reasonable time allowed him to sell the shares, and to produce a purchaser who will take a transfer of them. Per *Lord Selborne* *ibid.* p. 595, the case of trustees who take a transfer in their names differs, in principle, from that of executors who merely intimate their title as executors to a Company, in order to claim and exercise the rights which belong to them as the legal representatives of their testator Trustees have not, in any proper sense of the word, a representative character, but executors have Having representative rights it is impossible that they should not be entitled to produce the legal evidence of them to the Company, for the purpose of having their title in some way recorded and recognized, without making themselves personally liable."

In that case the executor had more than twenty years before the winding-up authorized the stock to be transferred into his name, and had ever since acted as a shareholder.

By sec. 154 *post*, if the representative contributory makes default in payment of any sum ordered to be paid by him, proceedings may be taken

for administering the movable and immovable property of the deceased contributory.

"Whether the shareholder die after the commencement of the winding-up, and either before or after he has been placed on the list of contributories, or whether he have died many years before the winding-up, but his shares have not been either personally accepted," [see *Buchan's Case, ubi supra*] or otherwise disposed of by his executors, the liability of his estate is the same, and is that which would have been the liability of the shareholder if living.

"Executors then should be careful before proceeding to distribute their testators' estate among the beneficiaries, to see that they have provided for the contingent liability in respect of such shares as they have not disposed of, for otherwise they may become personally liable." Buckley, pp. 180, 181, 4th ed.

"Executors, when made contributories in respect of their testator's shares, are liable of course only in their representative character, and not personally, unless they have personally accepted the shares, or except so far as they have made themselves liable for a *devastavit*," *ibid.*, p. 182.

127. If any contributory becomes insolvent, either before or after he has been placed on the list of contributories, his assignees shall be deemed to represent such insolvent for all the purposes of the winding-up, and shall be deemed to be contributories accordingly, and may be called upon to admit to prove [? proof] against the estate of such insolvent, or otherwise to allow to be paid out of his assets in due course of law, any monies due from such insolvent in respect of his liability to contribute to the assets of the Company being wound up(i).

Contributories in case of insolvency.

Sec. 77 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting the words "insolvent" for "bankrupt" and "prove" for "proof" in that Act; and sec. 100 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. 12 and 13 Vic., c. 108, s. 14. The section in the English Act concludes thus: "and for the purposes of this section any person who may have taken the benefit of any act for the relief of insolvent debtors before the eleventh day of October one thousand eight hundred and sixty-one shall be deemed to have become bankrupt."

(i) See sec. 125 *supra*.

See the note to sec. 125 *supra*.

In *IN RE West of England Bank ex parte Budden and Roberts*, 12 Ch. D. 288, it was held that in the winding-up of a Company a shareholder who has become bankrupt cannot be placed on the list of present contributories, neither can his trustee in bankruptcy, whether prior or subsequent to the winding-up, be on the list if he has executed a disclaimer under sec. 23 of the English Bankruptcy Act, 1869; but the official liquidator of the Company was held entitled to prove in the bankruptcy in respect of the injury sustained by reason of the effect of the 23rd sec. of that Act. See *IN RE Cape Le Breton Co.*, 19 Ch. Div. 77.

In the English Companies' Act, 1862, there follows a section 78, providing that if any female contributory marries either before or after she has been placed on the list of contributories her husband shall, during the continuance of the marriage, be liable to contribute to the assets of the Company the same sum as she would have been liable to

contribute if she had not married, and he shall be deemed to be a contributory accordingly. (See *IN RE West of England Bank*, ex parte *Hatcher*, 12 Ch. D. 284, and Mr. Buckley's note 4th ed. 183. In India sec. 4 of the Indian Succession Act X. of 1865 effected a complete change in the status of married women domiciled in India (see the section Appendix *post*), consequently the Indian Companies' Act does not contain a section corresponding to sec. 78 of the English Companies' Act. 1862. As to some of the effects of sec. 4 of the Succession Act, see *Miller v. Administrator General of Bengal*, I. L. R. 1 Calc. 412, and *Proby v. Proby*, I. L. R. 5 Calc. 357; 5 C. L. R. 1.

Winding-up by Court.

Circumstances under which Company may be wound up by Court.

128. A Company under this Act may be wound up by the Court as hereinafter defined(i) under the following circumstances (that is to say):—

(a) whenever the Company has passed a special resolution(ii) requiring the Company to be wound up by the Court;

(b) whenever the Company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year;

(c) whenever the members are reduced in number to less than seven(iii);

(d) whenever the Company is unable to pay its debts;

(e) whenever for any other reason of a like nature the Court is of opinion that it is just and equitable that the Company should be wound up.

Sec. 79 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 101 of the Indian Companies' Act X. of 1866, *verbatim*, save that in clause (e) the words "for any other reason of a like nature" are inserted in this Act.

Cf. Act XIX. of 1857, s. 65.

(i) See sec. 130 *post*.

(ii) See sec. 77 *supra*.

(iii) See sec. 73 *supra*.

Unregistered Companies must consist of more than seven members, to be wound up under this Act, see sec. 243 *post*.

As to who may petition for the winding-up, see sec. 131 *post*.

Sections 191—196 *post* provide for winding-up, subject to the supervision of the Court; and sections 173—190 for the voluntary winding-up of a Company.

By sec. 140 *post* the Court may, as to all matters relating to the winding-up, have regard to the wishes of creditors or contributories. So also in the case of winding-up subject to the supervision of the Court, sec. 193 *post*.

As to the principles which govern the Court in making a winding-up order on a contributory's and a shareholder's petition respectively, see Buckley, 4th ed., pp. 184—189.

In *IN RE Chapel House Colliery Co.*, 24 Ch. Div. 259, it was decided that although as a general rule an unpaid creditor of a Company which cannot pay its debts is entitled to a winding-up order, that order will not be made when it is shown that the petitioning creditor cannot gain anything by a winding-up order, and, *à fortiori*, it will not be made under those circumstances if the other creditors oppose it. Per *Bowen, L. J.* (p. 269): "The case may be decided on the simple principle that no one can be entitled to ask for a winding-up order when it is impossible that he should obtain anything by it." In the above case, the case of *IN RE Uruguay Central Ry. Co.*, 11 Ch. D. 372, was approved. See *Olafte Co.* 27 Ch. D. 278.

Sub-sec. (a). See *IN RE Orrell Colliery*, W. N. 1879, 106.

"Sub-sec. (b). In *IN RE German Date Coffee Co.*, 20 Ch. Div. 189, *Lindley, L. J.*, observes upon this sub-sec.: "That, I understand, is to give the Company a reasonable time. Supposing that there was no proof that the Company had failed within a year, I should think that the Company was entitled by statute to a year—the shareholders would be entitled to it. But when we have to deal with a case in which it is apparent within a year that the whole thing is abortive, that the Company cannot acquire that which it was intended to acquire, and cannot carry out the objects for which it was formed, the Act does not require us to wait a year, and the case is then brought fairly within the 5th sub-sec., i.e., whenever the Court is of opinion that it is 'just and equitable,' that the Company should be wound up."

See also *RE Middlesbrough Assembly Rooms Co.*, 14 Ch. Div. 104. In that case a shareholder, in July 1879, presented a petition for winding-up the Company, on the ground that it had suspended business for more than a year. It appeared that the Company, which was formed for building and using and letting assembly rooms, had bought a site and begun the building by the end of 1875. Soon afterwards, owing to the depression of trade in the neighbourhood, the directors, with the sanction of the great body of shareholders, resolved to proceed no further till times improved. The sum which could still be raised for calls was sufficient to erect rooms, though smaller than those originally intended, but it did not appear that the Company could carry on the proposed business at a profit.

Shareholders to the amount of one-eighth in value supported the petition, but fully four-fifths in value of the shareholders opposed it. The Court of Appeal, reversing the decision of *Bacon, V.C.*, refused to make a winding-up order. Per *Cotton, L. J.*, p. 110: "A creditor who petitions for winding-up stands in a very different position from a shareholder. His only means of getting paid is by means of a winding-up order, and he therefore has a right to an order when the circumstances are such as give jurisdiction to make one. But a shareholder is in a very different position, and though the circumstances are such that the Court can make a winding-up order, it has a discretion as to whether it will make one on his application If the petitioner could satisfy the Court that the business of the Company had been suspended on account of inability to carry it on, or by reason of an intention to abandon the undertaking, the case would be very different."

See also *IN RE The Calcutta Jute Mills Co.*, I. L. R. 5 Cal., as to the granting of a winding-up order on a creditor's petition *ex debito justitiæ*.

Sub-sec. (c). See *Buckley*, 4th ed., p. 190.

Sub-sec. (d). See sec. 129 as to when a Company is to be deemed unable to pay its debts.

Sub-sec. (e). This sub-section puts a legislative interpretation upon the cases which have been decided upon the same sub-section in England, see *Shelford's Law of Joint Stock Companies*, 2nd ed., p. 220; *Buckley*, 4th ed., p. 190, and the cases there cited; and per *Baggallay, L. J.*, in *RE Diamond Fuel Co.*, 13 Ch. Div. 408.

As to the circumstances under which the Court will deem it "just and equitable" that a Company should be wound up, see *IN RE Diamond Fuel Co.*, 13 Ch. Div. 400, where the winding-up order was made on the petition of a fully paid-up shareholder, and it was established that the business of the company could not be resuscitated, and there was a reasonable probability that sufficient monies would be recovered from the directors on account of their misconduct to leave a surplus for division among the shareholders of the Company.

IN RE Haven Gold Mining, 20 Ch. Div. 151, the winding-up order was made on the petition of two fully paid-up shareholders, although the large majority of the shareholders desired to continue to carry on the Company, the Court being satisfied that the subject-matter of the business for which the Company had been formed had substantially ceased to exist. Per *Brett, L. J.*, p. 165: "The majority of the Company desire to continue the scheme, the minority desire to wind-up compulsorily. The Company is not insolvent. Under such circumstances, it appears to me that the Court cannot interfere, unless there is within a reasonable meaning of such a phrase a total absence of the possession or right to possession by the Company of the subject-matter which the Company was formed to work, and no reasonable prospect of the Company obtaining possession of such subject-matter."

See also *IN RE German Date Coffee Co.*, 20 Ch. Div. 169, where the winding-up order was also made on the petition of two shareholders, and where it was held that "the substratum of the Company" had failed, and it was impossible to carry out the objects for which it was formed. In this case, also, the large majority of the shareholders who remained in the Company desired to continue it, and it was in solvent circumstances.

The mere fact of there having been fraud in the promotion of the Company, or fraudulent representation in the prospectus, is not sufficient to induce the Court to make a winding-up order, for the majority of the shareholders would have power at a general meeting to waive the fraud and complete the bargain, or they may vary the bargain on the ground of fraud, and complete it with variations. Per *Jessel, M. R.*, *IN RE Haven Gold Mining Co.*, 20 Ch. Div. 164.

After a resolution for a voluntary winding-up has been passed, a shareholder cannot, unless where the resolution has been passed fraudulently, or where creditors appear to support the petition, obtain a compulsory order for winding-up, or an order for continuing the voluntary winding-up under supervision, *IN RE Gold Co.*, 11 Ch. Div. 701, see *post*, note to sec. 173.

Foreign
Company.

A Joint Stock Company formed in India, and incorporated by registration under Indian law, having its principal place of business in India, with a branch office and an agent in England, may be wound up under the English Act, 1862, *IN RE Commercial Bank of India*, L. R. 6 Eq. 517; and compare *IN RE Union Bank of Calcutta*, 3 De G. & S. M., 253.

IN RE the Calcutta Jute Mills Co., I. L. R. 5 Calc. 888, it was held by *Wilson, J.*, that a Company, of which the assets and the bulk of the shareholders are in India, and the actual business operations, and ultimate control and direction of which are carried on and exercised in India, is an Indian Company, and that an agency or branch establishment is not a principal place of business; also that the fact that the Company was registered in England did not exclude the jurisdiction of the High Court at Calcutta to make a winding-up order, and the mere fact that the Court of Chancery in England had also the power to wind-up the Company was not a sufficient ground for refusing the order. *IN RE Agra and Masterman's Bank*, 1 Ind. Jur., N. S., 335, was distinguished on the ground that in that case the *dictum* of *Peacock, C. J.*, referred to an English Company formed by Royal Charter or under Imperial Statute, and not to a Company Indian in everything except registration.

But in *IN RE The East Indian Bank*, 1 Ind. Jur. N. S. 330, it was held that a Company registered only in Bombay could not be wound up in Calcutta.

The case of *Bulkeley v. Schutz*, L. R. 3 P. C. 764, shows that a foreign Company, actually complete and existing in a foreign country, cannot be brought within the purview of the English Act, and that case was approved in *Bateman v. Service*, 6 Ap. Ca., 386; but see note to sec. 6 *supra*.

An action will lie for maliciously presenting a petition to wind up a trading Company, even though no pecuniary damage to the then Company can be proved, for the presentation of the petition is, from its very nature, calculated to injure the credit of the Company. *Quartz Hill Consolidated Gold Mining Co. v. Eyre*, 11 Q. B. Div. 674.

129. A Company under this Act shall be deemed to be unable to pay its debts(i)—

Company
when deemed
unable to pay
its debts.

(a) whenever a creditor, by assignment or otherwise, to whom the Company is indebted in a sum exceeding five hundred rupees then due, has served on the Company, by leaving the same at its registered office(ii), a demand under his hand requiring the Company to pay the sum so due, and the Company has for the space of three weeks succeeding the service of such demand neglected(iii) to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor;

(b) whenever execution or other process issued on a decree or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the Company is returned unsatisfied in whole or in part;

(c) whenever it is proved to the satisfaction of the Court that the Company is unable to pay its debts.

Sec. 80 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting five hundred rupees for fifty pounds in clause (a), omitting "in England and Ireland" after "whenever" and "at law or in equity" after "in favour of any creditor" in clause (b), and omitting clause (3) in the English section, which refers to proceedings in Scotland only; and sec. 102 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 67 of Act XIX. of 1857.

(i) As to when an unregistered Company shall for the purposes of this Act be deemed to be unable to pay its debts, see sec. 243 (Cl. 4), *post*.

(ii) Sec. 63, *supra*. If there is no registered office the demand may be left at the Company's unregistered office, *British and Foreign Gas Co.*, 13 W. R. 649; 12 L. T. 368; 11 Jur. (N. S.) 559.

(iii) "Neglected" *i.e.* "omitted without reasonable excuse," see *Buckley*, 4th ed., 195, and case there cited.

Under the *Life Assurance Companies' Act* (33 and 34 Vic., c. 61), 1870, creditors for less than £50 might present a petition to wind up a Company, and a statement that under the circumstances the Company was "admittedly insolvent" was a sufficient statement that it could not pay its debts. *IN RE British Alliance Assurance Corporation*, 9 Ch. D. 635. As to the tests of insolvency as applied to a Life Assurance Company, see *IN RE London and Manchester Industrial Association*, 1 Ch. D. 466.

Under clause (a) any creditor or contributory may take advantage of a demand requiring payment of his debt served by another on a Company, and the neglect of the Company to pay, secure, or compound for the same within the time hereby limited as a foundation for a petition to wind-up a Company, *RE Anglesea Coal and Coke Co.*, ex parte *Owen*, 4 L. J. Ch. 684, which was decided under clause 1 of sec. 68 of 19 and 20 Vic., c. 47, which corresponds to clause 1 of sec. 80 in the English Act, 1862. See sec. 131 *post*.

As to "execution or other process issued on a decree or order obtained in any Court" see the Civil Procedure Code XIV. of 1882, chap. XIX. and Small Cause Courts (Presidency) Act XV. of 1882, Sched. II., which incorporates certain portions of Chap. XIX. of Act XIV. of 1882. And sections 19 and 20, 38 and 39 of the Mofussil Small Causes Courts Act XI. of 1865.

Definition of
"the Court."

130. The expression "the Court" as used in this Part of this Act shall mean the principal Court having original civil jurisdiction in the place in which the registered office of the Company is situate, unless in the regulations for the management of the Company it shall be stipulated that the Company if wound up, shall be wound up by the High Court of Judicature at Fort William, Madras or Bombay (as the case may be), or by the Chief Court of the Panjab, in which case the word "Court" shall mean the said High Court or Chief Court (as the case may be) in the exercise of its original civil jurisdiction.

Definition of
"debts."

The expression "debts" as used in this Part of this Act means debts actually due, of which the creditor could claim immediate payment, except in the case of a Company issuing or liable under policies of assurance upon human life within British India, or granting annuities upon human life within British India. In the case of such a Company (hereinafter called a life-assurance Company), the expression "debts" as so used, includes also contingent or prospective liability under policies and annuity and other existing contracts.

Sec. 81 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, first para., defines "the Court," and is of course entirely different from the present section. The first paragraph of this section corresponds *verbatim* with sec. 103 of the Indian Companies' Act X. of 1866, from which however the second paragraph, defining "debts," is wholly omitted.

Cf. also Sec. 59 of Act XIX. of 1857.

The definition of "debts" is derived from the cases of *Re European Life Assurance Society*, L. R. 9 Eq. 122; and *ex parte Spackman Re the Agriculturist Insurance Co.*; 18 L. J. Ch. (N. S.) 261; 1 Mac. and G. 170. As to what is not a "debt" sufficient to justify an application for a winding-up order see *IN RE Milford Docks Co., Lister's Petition*, 23 Ch. D. 292.

As to debts in the case of life-assurance Companies, cf. sec. 21 of the *Life Assurance Companies' Act* (33 and 34 Vic., c. (61) 1870, which provides that "The Court may order the winding-up of any Company, in accordance with the Companies' Act, 1862, on the application of one or more policy-holders or shareholders, upon it being proved to the satisfaction of the Court that the Company is insolvent; and in determining whether or not the Company is insolvent the Court shall take into account its contingent or prospective liability under policies and annuity and other existing contracts, &c." This last clause is stated by Mr. Buckley, 4th ed., p. 540, to have been introduced in consequence of the decision in *IN RE The European Life Assurance Society*, L. R. 9 Eq. 122.

Sec. 21 of the *Life Assurance Companies' Act*, 1870, continues as in sec. 131 *post*.

131. Any application to the Court for the winding-up of a Company under this Act shall be by petition(i), which may be presented by the Company, or by any one or more creditor or creditors, contributory or contributories(ii), of the Company, or by all or any of the above parties, together or separately.

Application for winding-up to be made by petition.

[The petition must allege facts which, if proved, will justify an order for winding-up the Company.] Every order(iii) which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the Company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

In the case of a life-assurance Company the Court shall not give a hearing to the petition until security for costs for such amount as the Judge thinks reasonable is given, and until a *prima facie* case is also established to the satisfaction of the Judge; and where the Company has an uncalled capital of an amount sufficient, with the future premiums receivable by the Company, to make up the actual invested assets equal to the amount of the estimated liabilities, the Court shall suspend further proceedings on the petition for a reasonable time to enable the uncalled capital, or a sufficient part thereof, to be called up; and, if at the end of the original or any suspended time for which the proceedings have been suspended such an amount has not been realised by means of calls as with the already invested assets

is equal to the liabilities, an order shall be made on the petition as if the Company had been proved to be unable to pay its debts.

Explanation.—Nothing in this section authorizes the presentation of a petition by a member of a Company who is indebted to the Company in respect of a call made, or other monies due.

Paragraphs 1 and 2 of this section, save the sentence in brackets as above, correspond *verbatim* with sec. 82 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 104 of the Indian Companies' Act X. of 1866.

As to the sentence in brackets see *RE Steam Stoker Co.*, L. R. 19 Eq. 416; *RE Wear Engine Works Co.*, L. R. 10 Ch. 188; *RE Patent Cocoa Fibre Co.*, W. N. 1876, 132; *RE Langham Skating Rink Co.*, 5 Ch. Div. 669; *IN RE British Alliance Assurance Corporation*, 9 Ch. D. 635; *IN RE Rica Gold Washing Co.*, 11 Ch. Div. 36.

The third paragraph corresponds with s. 21 of the English *Life Assurance Companies' Act* (33 and 34 Vic., c. 61) 1870.

As to the *Explanation* see *IN RE European Life Assurance Society*, L. R. 10 Eq. 403; *IN RE Steam Stoker Co.*, L. R. 19 Eq. 416; *IN RE Petersburg Gas Co.*, 33 L. T. 637; 24 W. R. 230; and *IN RE Joint Stock Coal Co.*, L. R. 8 Eq. 146, 152, cited by Mr. Buckley, eq. 4th ed. p. 199, but the fact that a shareholder is in arrear with calls is not an absolute bar to his petitioning for a winding-up order, *IN RE Diamond Fuel Co.*, 13 Ch. Div. 400, see also *IN RE Birch Torr Co.*, *ex parte Lawton* 1 K. and J. 204.

(i) See Rules *post* 1—5.

(ii) Surely “policy-holders” in the case of a Life Assurance Co., should be added to these words. See sec. 21 of 33 and 34 Vic., c. 61, Buckley, 4th ed., 540.

(iii) See Rules *post*, 6—7 and forms Nos. 3—5.

Semble. The forms of pleading in Petitions should follow those directed by the Judicature Act in England, per *Brett, L. J.*, *IN RE Rica Gold Washing Co.*, 11 Ch. Div. 47.

When the Company respondents to a winding-up petition dispute the validity of the petitioners' debt they must adduce on the hearing such evidence as will show the Court that there is a question to be tried. If they fail to do this, a winding-up order ought to be made. *IN RE Great Britain Mutual Life Assurance Society*, 16 Ch. Div. 246.

Debt due from
Company must
be direct.

The debt due from the Company must be due from it direct to the creditor; where therefore bondholders were merely *cestuis que trustent* of a charge upon a Railway, having a right to put their trustees in motion to compel payment of the monies secured under a covenant in the trust deed, but not having any independent right under the deed or, under the form of bond issued thereunder, to sue the Company either at law or in equity, it was held that they were not creditors within the meaning of the English Companies' Act, 1862. *IN RE Uruguay, &c., Ry. Co. of Monte Video*, 11 Ch. D., 372.

The Court has jurisdiction to restrain by injunction a person claiming to be a creditor of a Company from presenting a petition to wind up the Company where the debt is *bonâ fide* disputed, and the Company is solvent; *Cercle Restaurant Co., v. Lavery*, 18 Ch. D., 555, and cases there cited. And where debenture-holders under an Act of Parliament had only a right to the appointment of a receiver, and had priority over other creditors, and were not in the position of ordinary mortgagees, it was held that they

could have no winding-up or sale of the undertaking, and their petition was consequently dismissed. *IN RE Herne Bay Waterworks Co.*, 10 Ch. D., 42.

"A petitioner holding fully paid-up shares is not liable to contribute anything towards the assets of the Company, and if he has any interest at all, it must be that after full payment of all the debts and liabilities of the Company, there will remain a surplus divisible among the shareholders of sufficient value to authorize him to present a petition. That being his position, and the rule that the petitioner must succeed upon allegations which are proved, of course the petitioner must show the Court by sufficient allegation that he has a sufficient interest to entitle him to ask for the winding-up of the Company. I say 'a sufficient interest,' for the mere allegation of a surplus, or of a probable surplus, will not be sufficient. He must show what I call a tangible interest." Per *Jessel, M. R.*, *IN RE Rica Gold Washing Co.*, 11 Ch. Div., 42, 43. See also per *Thesiger, L. J.*, *Diamond Fuel Co.*, 13 Ch. Div., 411, and per *Jessel, M. R.*, *IN RE Vron Colliery Co.*, 20 Ch. Div., 447.

Paid-up
Shareholder.

Whether the Court will order a winding-up on the application of a fully paid-up shareholder where the Company has no assets, except monies to be recovered under a case of fraud alleged and proved, *quare*, *RE Rica Co.*, 11 Ch. Div., 36.

In *IN RE Sylhet and Cachar Tea Co.*, 2 Ind. Jur. N. S. 94, a holder of fully paid-up shares was held entitled to apply for the winding-up of the Company.

A petitioner who after the presentation of a winding-up petition filed a petition under the Bankruptcy Act, 1869, for the liquidation of his affairs, was ordered to give security for costs in the winding-up petition. *IN RE Carta Para Mining Co.*, 19 Ch. D., 457 (following *Malcolm v. Hodgkinson*, L. R. 8 Q. B. 209 and *Brocklebank v. King's Lynn Steamship Co.*, 3 C. P. D., 365).

Security for
costs of
Petitioner.

To entitle a creditor to his costs of appearing on a winding-up petition, he must show a reasonable ground for appearing, *IN RE Hull and County Bank*, 10 Ch. D., 130.

Costs.

In *IN RE The Nabor Hali Tea Co.* 3 Beng. L. R. Appendix 11, the petitioning creditor was held entitled to his costs as a first charge on the assets of the Company, subject to any prior liens on the estate.

On the hearing of a winding-up petition an official liquidator should not be appointed, as it is the settled practice to direct a reference to Chambers for that purpose. *IN RE General Financial Bank*, 20 Ch. Div., 276.

As to the presentation of a second petition, see *Buckley*, 4th ed., pp. 201, 202, and as to costs of a petitioner who presents a second petition in ignorance of a prior one, see *IN RE General Financial Bank*, 20 Ch. Div., 576.

132. No contributory of a Company under this Act shall be capable of presenting a petition for winding-up such Company(i) unless the members of the Company are reduced in number to less than seven(ii), or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for a period of at least six months during the eighteen months previous to the commencement of the winding-up(iii), or have devolved upon him through the death of a former holder :

Contributory
when not
qualified
to present
winding-up
petition.

Provided that, where a share has, during the whole or any part of the six months, been held by or registered in the name of the wife of a contributory either before or after her marriage, or by or in the name of any trustee for such wife, or for the contributory, such share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the contributory.

Sec. 40 of the English Companies' Act (30 and 31 Vic., c. 131), 1867, *verbatim*.

- (i) See sec. 131, *supra*.
- (ii) See sec. 128 (c).
- (iii) Cf. table A (47), as to voting.

A winding-up petition by a shareholder ought to state that the petitioner had held his shares for six months before filing the petition, *IN RE City and County Bank*, L. R. 10 Ch., 470. Buckley, 4th ed., 512.

Where it was through the default of the Company which had been ordered by the Court to allot shares to the petitioners and register them as shareholders that the petitioners' names were not on the register for the six months, it was held that a winding-up order could be made, *IN RE Patent Steam Engine Co.*, 8 Ch. D., 464.

The word "*held*" has no technical meaning, the true meaning of the word being that the name of the contributory has been on the register as the holder of shares for the period in question. *IN RE Wala Wynaad Indian Gold Mining Co.*, 21 Ch. D., 849.

Commence-
ment of
winding-up
by Court.

133. A winding-up of a Company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up(i).

Sec. 84 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 105 of the Indian Companies' Act X. of 1866, *verbatim*.

- (i) Sec. 174, for the commencement of voluntary winding-up.

Sec. 191, as to winding-up under supervision and note thereto.

As to the "*commencement*" of a winding-up, where a voluntary winding-up has been followed by a compulsory winding-up order, see *IN RE Taurine Co.*, 25 Ch. Div., 118, noted fully *infra*, note to sec. 174.

Court may
grant in-
junction.

134. The Court may, at any time after the presentation of a petition for winding-up a Company under this Act, and before making an order for winding-up the Company, upon the application of the Company or of any creditor or contributory of the Company, restrain further proceedings in any suit or proceeding against the Company, upon such terms as the Court thinks fit(i).

The Court may also at any time after the presentation of such petition, and before the first appointment of liquidators appoint provisionally an official liquidator of the estate and effects of the Company(ii).

Sec. 85 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 106 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Secs. 136, 212, 241, 245, *post*, and notes thereto.

(ii) Secs. 141—146, rules 15 and 56 *post*, and Form No. 9.

By the present section and sections 241, 245, the Court has in the interval between the presentation of a petition and an order upon it, a discretionary power to restrain proceedings against the Company and (as respects secs. 241, 245), against any contributory: secs. 136, 242, and 246, peremptorily stay proceedings after an order has been made until the leave of the Court has been obtained to proceed with them. See Buckley, 4th ed., p. 206, where also the difference between this section and the sections in the English Act corresponding with secs. 241 and 245 *post* is pointed out.

See secs. 192, 195, *post*, whereby a petition and order respectively for winding-up subject to supervision shall for the purpose of giving jurisdiction to the Court over suits be deemed to be a petition and order for winding-up by the Court. By sec. 177, *post*, in a voluntary winding-up the creditors are to be paid *pari passu*, and by sec. 182 *post*, the Court may, on the application of the liquidators or a contributory, exercise all or any of the powers which it might exercise if the Company were being wound up by the Court.

Sec. 163 of the English Act, which corresponds with sec. 212 of this Act, see *post*, makes an execution issued against the effects of a Company after the presentation of a winding-up petition void; but according to the decided cases, this is subject to a discretionary power in the Court to allow execution to issue. *Jessel, M. R., IN RE Vron Colliery Co.*, 20 Ch. Div., 442, 446; 51 L. J. Ch. Div., N. S. 389.

There the execution was issued after the presentation of the petition; but the case is the same where the execution has been issued before, but the sheriff has not taken possession till after the presentation of the petition, *Ibid*.

In *IN RE Vron Colliery Co.*, 20 Ch. Div., 442; 51 L. J. Ch. Div., N. S. 389, the facts were as follows:—Repeated applications by a creditor of the Company for payment throughout the year 1881; 21st December 1881 payment on account made to him:

28th December writ issued by him against the Company.

4th January 1882 a paid-up shareholder of the Company, under considerable liability as a surety for it, presented a petition to wind it up, setting out a balance sheet which showed that the assets greatly exceeded the liabilities, but not alleging as a fact that they did so, stating that the Company was unable to pay its debts, and that it was just and equitable that it should be wound up.

6th January 1882 the creditor recovered final judgment without notice of the winding-up petition.

7th January execution issued by him.

14th January the petition came on for hearing and was supported by creditors and a winding-up order was made.

The creditor then applied for leave to go on with the execution.

The Court of Appeal, reversing *Bacon, C. J.*, held—

(a) That the petition could not be treated as collusively presented on behalf of a solvent Company for the purpose of defeating the execution, for that the balance-sheet could not be treated as proving the Company to be solvent and in fact they found that the Company was commercially insolvent, *i.e.*, it had no means of paying its debts at once. See per *Jessel, M. R.*, and *Holker, L. J.*

(b) The petitioner, though not legally a creditor, was virtually such, and by amending the petition by joining one of the supporting creditors it might have been made a creditor's petition.

(c) That consequently leave to proceed with the execution ought not to be granted.

(d) Leave ought not to be given on the ground that the creditor had given indulgence to the Company, as he had never given time to the Company in the sense of binding himself not to sue, but had merely abstained from suing: and whether the giving indulgence to a Company is a sufficient reason for allowing a creditor to continue his proceedings notwithstanding a winding-up, *quære*.

Jessel, M. R., 20 Ch. Div., p. 448, "Cases decided by Courts of first instance were cited, which lay down that the mere giving indulgence is a reason for preferring the creditor. I am not satisfied that these cases were rightly decided. It is not necessary to say on the present occasion whether they ought to be overruled. I only say that I am not satisfied that they ought to be upheld. I do not see why a creditor's allowing time to a Company should place him in a better position than other creditors under a winding-up. [Ex parte *Railway Steel and Plant Co.*, *IN RE Taylor*, 8 Ch. D., 183.] So as to the case [*IN RE Richards and Co.*, 11 Ch. D., 676] in which a creditor who had been induced to delay his proceedings by false pretences has been held entitled to preference. I am not satisfied that they were well decided. A Company does not make false pretences; its directors may have made them, but they are not agents of the Company for the purpose of making false pretences. That question, however, does not arise on the present occasion, and I say no more than that I do not wish to be understood as approving of these decisions." See also per *Brett, L. J.* on the two cases above mentioned at p. 449, 20 Ch. Div.

When the Court will not stay proceedings.

The Court, however, will not exercise its discretion in favour of a Company to stay proceedings when the Company have allowed an order to be made whereby the person seeking to issue execution has incurred a liability and altered his position, and have lain by till that order could not be appealed from; *Rudow v. Great Britain Mutual Life Assurance Society*, 17 Ch. Div., 660, where it was also held that where proceedings are pending for winding-up an unregistered Company, all the provisions of Part IV. of the Companies' Act 1862, other than those expressly excepted, are applicable. See note to secs. 245 and 248, *post*.

As to restraining a distress, after a Company has gone into voluntary liquidation see *Thomas v. Patent Lionite Co.*, 17 Ch. Div., 250, and see sections 177 and 182 *post*.

Distress for rent

The principles applicable to this proceeding are thus stated by *Fry, J.* in *IN RE Brown, Blyly and Dixon*, ex parte *Roberts and Wright*, 18 Ch. D., 649, where it was held that mortgagees having a right of distress to enforce payment of interest will be allowed to distrain after a winding-up for interest accrued while the liquidators were in possession, but not for arrears accrued before the winding-up, p. 652. "A mortgagee and a lessor, though in one sense independent persons, are nevertheless creditors of the Company in respect of any amount due on the mortgage, or on the lease at the date of the winding-up, and, as such creditors, they ought, in my judgment, to have neither preference nor priority. In respect of any rights arising after the winding-up by reason of the Company or the liquidators remaining in possession of the demised or the mortgaged premises, they ought, in my judgment, to be treated as independent persons, and if the Company or the liquidator choose to remain in possession of the demised or mortgaged premises, they must so remain upon the terms and conditions of the instrument; just as any other person must observe those terms. In that way, then, I draw the line at the commencement of the winding-up; and I hold that all claims of creditors before that date should be dealt with upon the principle of equality; but that with regard to the

rights after that, the Company is in no better position because it has become insolvent and has had a winding-up. That appears to me to be consistent with the current of decision which has drawn the line with regard to the exercise of the power of distress in respect of rent accrued before and rent accrued after the winding-up. The practice certainly has grown-up of allowing the lessor to distrain or to be paid in full in respect of rent, after the winding-up; but with respect to rent before the winding-up, to allow him only his right to compete with the other creditors by proving in the winding-up."

See also *Thomas v. Patent Lionite Co.*, 17 Ch. Div., 250, 256.

But where the landlord, by enforcing his right of re-entry, is seeking to exercise a legal right to determine the term, if the Company desire to hold the estate after a winding-up subject to that legal right, the Company must satisfy the legal condition which precluded that right from being exercised. Therefore where a half-year's rent of a mine accrued due on the 3rd of November 1880, and on the 5th November an order was made for winding-up the Company which related back to the 7th October 1880, when the petition was presented, and the lessors had the right, if rent remained unpaid for thirty days after it was due, to enter and stop the working as well as to distrain, and on the 6th December they gave notice to the liquidator demanding either payment of the rent or stoppage of the works, but the liquidator continued working for the benefit of the Company, and did not pay the rent, it was held by *Fry, J.*, upon a summons by the lessor for leave to distrain that the liquidator having elected to continue the working for the advantage of the Company must pay the full rent due out of the first assets. *IN RE Silkestone and Dodworth Coal and Iron Co.*, 17 Ch. D., 158, with which contrast *IN RE South Kensington Co-operative Stores*, 17 Ch. D., 161, and see also *General Share and Trust Co., v. Wetley Brick and Pottery Co.*, 20 Ch. Div., 260.

All the cases on this subject are to be found cited and classified by *Lindley, L. J.*, delivering the judgment of the Appeal Court in *IN RE Oak Pit Colliery Co.*, 21 Ch. Div., 322, 51 L. J. N. S., Ch. Div., 768, where it was held that a landlord is entitled to distrain for, or to be paid in full, rent accruing after the commencement of the winding-up, if the liquidator has retained possession for the purposes of the winding-up, that is, if he has used the property for carrying on the Company's business, or has kept the property in order to sell it or to do the best he can with it. But the landlord is not entitled to such priority if the liquidator has kept possession by arrangement with the landlord, and for his benefit as well as for the benefit of the Company, and has not agreed with the landlord to pay rent, nor if he has done nothing except abstain from trying to get rid of the property which the Company holds as lessee. The following is a concise abstract of the cases as cited by *Lindley, L. J.*, in the above case.

I. Distress for rent in arrear at commencement of winding-up.

a. If landlord a legal creditor of the Company, he is not allowed to distrain, but must prove in ordinary way.

IN RE Traders' North Staffordshire Carrying Co., 41 L. J., Ch. 172; L. R. 19 Eq. 60; *IN RE Coal Consumers' Association*, 46 L. J. Ch. D., 501; 4 Ch. D., 625; *Thomas v. Patent Lionite Co.*, 50 L. J., Ch. Div., 544; 17 Ch. Div., 250.

N.B.—In such cases the circumstance that the liquidator has retained possession and carried on the Company's works does not entitle a landlord or a mortgagee (with a power of distress as and for rent) to distrain for rent in arrear in the winding-up.

IN RE Brown, Bayly and Dixon, ex parte *Roberts and Wright*, 50 L. J., Ch. D., 738; 18 Ch. D., 649; *IN RE North Yorkshire Iron Co.*, 47 L. J., Ch. D., 333; 7 Ch. D., 661; *IN RE South Kensington Co-operative Stores*, 50 L. J., Ch. D., 446; 17 Ch. D., 161.

b. If landlord not legal creditor of the Company by reason of Company not being his tenant, he may distrain.

IN RE *Exhall Coal Mining Co.*, 4. De G. J. and S., 377; 33 L. J. Ch. N. S., 595; although the liquidator offers to allow the arrears to be proved in the winding-up, IN RE *Regent United Service Stores*, 47 L. J., Ch. Div., 677; 8 Ch. Div., 616, to which cases add IN RE *Co-operative Carriage Supply Association*, 23 Ch. D., 154, where *Fry, J.*, 157, says, "the result of the decisions is this, that if the landlord be a stranger to the Company, he is allowed to avail himself of a distress put in after the commencement of the winding-up; but if he have a right to prove for his rent in the winding-up he is not allowed to have the benefit of his distress.

II. Distress for rent accruing after the commencement of the winding-up.

a. If liquidator has retained property for the purposes of the winding-up and Company's benefit landlord may distrain.

IN RE *Lundy Granite Co.*, 40 L. J., Ch. N. S. 588; L. R. 6 Ch. 462; IN RE *North Yorkshire Iron Co.*, *ubi supra*; IN RE *Brown, Bayly and Dicon*, ex parte *Roberts and Wright*, *ubi supra*; IN RE *Silkstone Coal and Iron Co.*, 50 L. J., Ch. D., 444; 17 Ch. D., 158; IN RE *South Kensington Co-operative Stores*, *ubi supra*.

b. If liquidator has kept possession by arrangement with the landlord, and for his benefit as well as for the benefit of the Company, landlord may not distrain.

IN RE *Progress Insurance Co.*, 39 L. J., Ch. N. S., 504; L. R. 9 Eq. 370; IN RE *Bridgewater Engineering Co.*, 48 L. J., Ch. D., 389; 12 Ch. D., 181.

And at p. 330, 21 Ch. Div., 330, *Lindley, L. J.*, continues, "when the liquidator retains the property for the purpose of advantageously disposing of it, or when he continues to use it, the rent of it ought to be regarded as a debt contracted for the purpose of winding-up the Company, and ought to be paid in full like any other debt or expense properly incurred by the liquidator for the same purpose, and in such a case it appears to us that the rent for the whole period during which the property is so retained or used ought to be paid in full without reference to the amount which could be realised by a distress. But no authority has yet gone the length of deciding that a landlord is entitled to distrain for or be paid in full rent accruing since the commencement of the winding-up, when the liquidator has done nothing except abstain from trying to get rid of the property which the Company holds as lessee. If the landlord had tried to re-enter and the liquidator had objected, the case might be different."

Rates.

When the occupation by the liquidator of the property of a Company in liquidation had not been beneficial, an application for payment in full of poor-rates and Local Board of Health rates made after the liquidation commenced was refused by *Koy, J.*, IN RE *Watson Kipling and Co.*, 23 Ch. D., 500. See *Buckley*, 4th ed., p. 215.

As to the principle that expenses incurred in the winding up of a Company (which will include costs incurred by a Company in liquidation) are payable and not provable; See *Buckley*, 4th ed., p. 215, and the cases there cited.

The word "proceeding" in this section and sec. 136 *post* (which corresponds with sec. 87 of the English Companies' Act, 1862) of course includes execution under a judgment in an action. IN RE *Artistic Colour Printing Co.*, 14 Ch. D., 505, *Jessel, M. R.*

As to execution generally in India see the Civil Procedure Code XIV. of 1882, Chapter XIX.

As to proceedings by the Crown see sec. 212 *post*, and note thereto, and *Secretary of State for India v. Bombay Landing and Shipping Co.*, 5 Bom. H. C. O. C. J., 33. See also *Buckley* 4th ed., 211.

In *IN RE Sylhet and Cachar Tea Co.*, 2 Ind. Jur. N. S., 123, where leave had been given to certain creditors to proceed to execution in a suit against the Company, while proceedings for the winding-up of the Company were pending, but before the winding-up order was made it was held that the leave to proceed to execution was not necessarily affected by the winding-up order.

Where leave has been given to creditors to proceed before winding-up order actually made.

Where a Company was being wound up by the Court of Chancery in England an action brought against it in India was ordered to be stayed, *Peitsch v. Commercial Banking Corporation*. 1 Ind. Jur. N. S., 363, and see *Bank of Hindustan v. Premchand Roychand*, 5 Bom. H. C. O. C. J. 83, noted to sec. 136, *post*.

Proceedings in English Courts how far recognised in India.

Although in all cases where a Company is being wound up by the Court of Chancery in England, the Courts in India are bound, so far as they can, on a principle of comity to give effect to all the proceedings and orders of the Court of Chancery relative to the administration of the assets of the Company, yet the Courts in India will not extend the operation of the English Act itself to India.

Therefore where on the 25th October 1870, a petition was presented in England for winding-up a Company whose domicile was in England, and a winding-up order was made on the 12th November 1870, and certain properties of the Company which had been attached in execution of decrees on the 20th September 1870, and the 27th October 1870, were sold in execution of the decrees on the 9th December 1870, no notice of the petition or winding-up order having been served on the Court by which the sale was effected, it was held that the sale was valid: per *Phear, J.*, "The proceedings in the suits appear to have been regular, the property had been attached in due course, and the order for sale had been made. Had the official liquidator or his representative come in before the sale was actually effected, I think it would have been right that the munsiff should have given the fullest consideration to his application, and probably the munsiff in such an event should have stayed the sale until the liquidator could have obtained directions from the Court of Chancery at home relative to selling the property. I say probably, because it is possible that even at that time the condition of the tea gardens was such as made it almost imperative they should be sold without any very considerable delay. . . . all I repeat that this Court or any other Court foreign to the Court of Chancery can do in a matter like the present is, within the limits of its own procedure in a case before it, to make such an order as will leave the assets so far as may be proper under the administration of the Court of Chancery."

It was further held that the case was not a proper one for the exercise of the power which the High Court possessed under clause 13 of the Letters Patent 1865 to remove the decree suits to the High Court to be tried in its extraordinary original civil jurisdiction.—*In the matter of the Decree-suits numbered 228 &c., in the Court of the Munsiff of Debroghar*, 7 Beng. L. R. 305.

As to the payment of costs in the event of the assets being insufficient to satisfy the liabilities, see sec. 158 *post* and note thereto.

As to the power of the Court to restrain executions, actions, &c., where a Company is being wound-up voluntarily, see Lindley on Partnership, 3rd ed., 1311—1313; 4th ed. 1276 *et seqq.* and Buckley, 4th ed., p. 216, where also the mode of dealing with the costs in the case of a creditor's action in voluntary winding-up will be found discussed.

See Buckley, 4th ed., p. 218, and Lindley 4th ed., p. 1293, as to his duties and appointment generally; under rule 15 *post*, application for the appointment of a provisional liquidator is to be made by petition. Cf. Palmer's Precedents, 3rd ed., pp. 430.

Provisional Liquidator.

As to the commencement of a voluntary winding-up from the appointment of a provisional liquidator, see *IN RE Colonial Trusts Corporation*, ex parte *Bradshaw*, 15 Ch. D., 465, 473.

IN RE Agra and Masterman's Bank, 1 Ind. Jur. N. S., 335, *Phear, J.*, appointed a provisional liquidator; but on appeal the order was reversed, as the Company was not an Indian Company.

As to whether a provisional official liquidator, who appears on the hearing of a petition to wind-up a Company, is entitled to his costs. See *Buckley*, 4th ed., p. 222.

Course to be
pursued by
Court on
hearing
petition.

135. Upon hearing the petition, the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order or any other order that it deems just(i).

Sec. 86 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 107 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. also secs. 69—71 of Act XIX. of 1857.

(i) Rules 6, 7, and Forms 3—5 *post*.

For the practice and cases with reference to this section, see *Buckley*, 4th ed., pp. 218, *et seqq.*

The following cases may be added thereto: *IN RE Great Western Coal Consumers' Co.*, 51 L. J., Ch. D., 743 (*post*, note to sec. 140) a creditor's petition was ordered to stand over.

IN RE Gold Hill Mines, 23 Ch. Div., 210, it was held that where a petition to wind-up is improperly filed the Court has jurisdiction on motion to stay all proceedings under it, or to dismiss it; in this case the petition was brought to compel payment of a small debt which was *bonâ fide* disputed, and was unsupported by any evidence that the Company was insolvent, and it was dismissed with costs.

Appeal.

As to appeals from winding-up orders, see *post*, s. 169.

Mr. Buckley, 4th ed., p. 221, thus sums up the cases relating to costs under this section:—

Costs.

“The usual order as to costs which is now commonly made, gives costs “to the petitioner if the petition succeeds, and to the Company if it fails, “and further gives one set of costs to the contributories, and one to the “creditors who support the winning side. If the petition succeeds, “these costs are given out of the Company's estate; if it fails, they are “given against the petitioner. There is no exception to deprive of their “costs creditors appearing on a shareholder's petition which fails. “They are invited by the petitioner to appear by the advertisement of “the petition, and if he fails he must pay their costs. But the creditor “is not entitled to his costs as a matter of right; he must show a “reasonable ground for appearing.”

As to the costs to which a creditor who presents a petition in ignorance of a prior petition will be held entitled—See *IN RE General Financial Bank*, 20 Ch. Div., 276.

Security for
costs on appeal.

When a limited Company alone appeals from a winding-up order, without joining any one personally responsible for costs, it will generally be ordered to give security for costs. *IN RE Photographic Artists' Co-operative Supply Association*, 23 Ch. Div., 370.

Suits to be
stayed after
order for
winding-up.

136. When an order has been made for winding-up a Company under this Act, no suit or other proceeding shall be proceeded with or commenced

against the Company except with the leave of the Court and subject to such terms as the Court may impose(i).

Sec. 87 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 108 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) ss. 212, 242, 246.

Cf sec. 72 of Act XIX. of 1857.

See Buckley, 4th ed., pp. 225, 229:—"After a winding-up order has been made any further proceedings are to be absolutely put a stop to until leave has been obtained from the Court."

See sec. 134 *supra*, and note thereto.

The English Companies' Act (25 and 26 Vic., c. 89), 1862, does not expressly or by necessary implication extend to India, or to persons domiciled in India. Consequently a suit may be brought in the Courts in India against a Company that is being wound-up under the English Companies' Act, 1862, without the leave of the Court of Chancery being first obtained, but the High Court will, in the exercise of its general power, stay the proceedings in a suit against such a Company, where the circumstances are such as to render it proper so to do. *Bank of Hindustan v. Prenchund Raichund*, 5 Bom. H. C. O. C. J. 83. This case was referred to and approved in *IN RE Oriental Inland Steam Co. ex parte Scinde Railway Co.*, L. R. 9 Ch. 557; 30 L. T. 317; 31 L. T. 5; 22 W. R. 622, 810, where it was held that where a Company had been ordered to be wound up in England, judgment creditors who were in that country and had proved under the winding-up were not allowed to attach property in India belonging to the Company. The reason of that decision was that inasmuch as the English Act enacted that in the case of a winding-up the assets of the Company so wound up were to be collected and applied in discharge of its liabilities, the property of the Company became trust property affected by the Act of Parliament, with an obligation to be dealt with by the proper officer in a particular way, and that the position of a creditor who had by means of an execution abroad been able to obtain possession of part of the assets of the Company was the same as that of one *cestui que trust* getting possession of the trust property after the property had been affected with notice of the trust, in which case that *cestui que trust* must bring it in for distribution among the other *cestui que trustent*. *Mellish, L. J.*, pp. 559—560, goes on to say, "I quite agree that the 87th sec. of the Act of 1862, providing that no action shall be brought without the sanction of the Court and the 163rd sec. [sec. 212 of this Act] enacting that no execution shall issue, apply only to the Courts in this country. Of course Parliament never legislates respecting strictly Foreign Courts. Nor is it usually considered to be legislating respecting Colonial Courts or Indian Courts, unless they are expressly mentioned.

Then it is said that the assets are subject to the law of the place where they are. I quite agree that if the law of the place where they are had given a charge of that nature on the assets prior to the time when the petition for winding-up was presented, or possibly prior to the time when the winding-up order was made, and a judgment, for instance, had been put on the register, that might, by the law of Bombay, have constituted a charge on the property of the Company, and then the trust for the benefit of the creditors would have been subject to that charge. But here there is no allegation that the judgment in Bombay, any more than a judgment here, simply *qua* judgment, operates as any charge at all. It is quite clear that it does not, and that until the execution and attachment have been issued and been executed, there is no actual charge on the property. That charge is subsequent to the creation of the

trust, and is made by the particular appellants here with full notice of the trust." See also *Peitech v. Commercial Bank Corporation*, 1 Ind. Jur. N. S. 263.

A mortgagee, however, of immovable property situate in a foreign country, who has instituted legal proceedings in that country for the purpose of enforcing his rights, will not be restrained by injunction from prosecuting such proceedings, even though the mortgagor is a Company in course of winding-up in England, at all events, if the party seeking to restrain him may appear before the Foreign tribunal and assert his rights; *Moor v. Anglo-Italian Bank*, 10 Ch. D., 681.

The word "proceeding" in this as well as in the 134th sec. includes execution under a judgment in an action. *IN RE Artistic Colour Printing Co.*, 14 Ch. D., 502, 505.

In sec. 72 of Act XIX. of 1857 the words were "suits and action"; as to the effect of the omission from that sec. of the word "proceeding," see *Narayan Shamji v. Guzerat Trading Co., and Motiram Dalpatram v. Guzerat Trading Co.*, 3 Bom. H. C. O. C. J. 20.

Principles as regards staying proceedings.

The principles upon which the Court acts with reference to staying proceedings are so clearly defined by *James, L. J.*, in *IN RE David Lloyd and Co.*, 6 Ch. Div., p. 344, that the following portion of his judgment is here set out:—"These sections (i. e. 83 and 87) of the Companies' Act, and the corresponding legislation with regard to bankrupts, enabling the Court to interfere with actions, were intended, not for the purpose of harassing, or impeding, or injuring third persons, but for the purpose of preserving the limited assets of the Company or bankrupt in the best way for distribution among all the persons who have claims upon them. There being only a small fund or a limited fund to be divided among a great number of persons, it would be monstrous that one or more of them should, by harassing the Company with actions and incurring costs which would increase the claims against the Company, diminish the assets which ought to be divided among all the creditors. But that has really nothing to do with the case of a man who for the present purpose is to be considered as entirely outside the Company, who is merely seeking to enforce a claim, not against the Company, but against his own property. The position of a mortgagee under such circumstances is, to my mind, exactly similar to that of a man who said, 'you, the Company, have got property which you have taken from me; you are in possession of my property by way of trespass, and I want to get it back again.' A landlord might say, 'you have property under lease from me; you have broken the covenants of the lease, and I have a right of re-entry in consequence of that breach.' The Company ought not, because it has become insolvent or because it has been minded to wind-up its affairs, to be placed in a better position than any other lessee with regard to his lessor. So with regard to a mortgagee. The mortgagee says, 'There is some property upon which I have a certain specific charge, and I want to realize that charge. I have nothing to do with the distribution of your property among your creditors, this is my property.' Why a mortgagee should be prevented from doing that I cannot understand. Power was given to the Court to interfere with actions by restraining them or not allowing them to proceed, but this power was given because it was understood that the Court would exercise it with a due regard to the rights of third persons, persons who were not members of the Company, and who had not to come in and claim to share in the distribution of the Company's assets among the creditors, and who were not therefore *quasi* parties to the winding-up proceedings. The Court would have due regard to the rights of independent persons. A mortgagee is, to my mind, such an independent person, and his rights ought not to be interfered with because his mortgagors have chosen to become insolvent and to have a winding-up."

And see Buckley, 4th ed., p. 227.

For other instances in which the Court has given leave under this section, see Buckley, 4th ed., pp. 228, 229. And for Forms under this section, see Palmer's Precedents, 3rd ed., p. 495.

From *Western and Brazilian Telegraph Co. v. Bibby*, 42 L. T. 821, it appears that leave to commence an action against a Company in liquidation should not be given on an ex parte application.

For the principles applicable to staying proceedings at the suit of an execution creditor against the estate of a trader for the winding-up of which an order had been made under Act XXVIII. of 1865, see *The Financial Association of India and China v. Pranjoandás Harjivandas*, 3 Bom. H. C. O. C. J. 25.

137. When an order has been made for winding-up a Company under this Act, a copy of such order shall forthwith be forwarded by the Company to the Registrar of joint stock Companies, who shall make a minute thereof in his books relating to the Company. Copy of order to be forwarded to Registrar.

Such order shall be deemed to be notice of discharge to the servants of the Company, except when the business of the Company is continued.

The first paragraph of this sec. corresponds *verbatim* with sec. 88 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 109 of the Indian Companies' Act X. of 1866.

Cf. sec. 72 of Act XIX. of 1857.

The first portion of the second paragraph gives the effect of *Chapman's case*, L. R. 1 Eq. 346; *Shirreffs' Case*, L. R. 14 Eq., 417.

The exception is taken from *IN RE English Joint Stock Bank ex parte Harding*, L. R. 3 Eq. 341. Cf. *IN RE Northfield Iron Co.*, 14 L. T. 695; W. N. 1866, 253.

Captains and crews of sea-going vessels are entitled to be paid their wages in full, in priority to other creditors of a Company—although other servants are not so entitled. *IN RE Calcutta Steam Tug Association*, 2 Ind. Jur. N. S. 19.

138. Such Court may, at any time after an order has been made for winding-up a Company, upon the application of any creditor or contributory of the Company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit. Power of Court to stay proceedings.

Sec. 89 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, in which the words "by motion" are inserted after "upon the application"; and sec. 110 of the Indian Companies' Act X. of 1866.

Cf. sec. 84 of Act XIX. of 1857.

"The section is not applicable for staying for a limited time or to a limited extent the proceedings in the winding-up. The Court can stay any particular proceedings by using its ordinary powers of control over the official liquidator." Buckley, 4th ed., p. 231.

A petition to wind-up a Company by a person claiming to be a creditor may be restrained by injunction, when the debt is *bonâ fide* disputed, and the Company is solvent. *Cercle Restaurant Co. v. Lavery*, 18 Ch. D., 555, and *Niger Merchants Co. v. Capper*, *ibid.* 557, n.

Effect of
order on
share-capital
of Company
limited by
guarantee.

139. When an order has been made for winding-up a Company limited by guarantee(i) and having a capital divided into shares, any share-capital that may not have been called up shall be deemed to be assets of the Company and to be a debt due to the Company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the Court.

Sec. 90 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, in which the words "and to be a debt" are followed by ("in England and Ireland of the nature of a specialty"), as to which see *supra*, secs. 11 and 39, and notes thereto; and sec. 111 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See sec. 9 *supra* as to the memorandum of association and sec. 37 as to the articles of association of such a Company.

As to the effect of voluntary winding-up on the share capital of a Company limited by guarantee, see sec. 178 *post*.

Court may
have regard
to wishes of
creditors or
contribu-
tories.

140. The Court may, as to all matters relating to the winding-up, have regard to the wishes of creditors or contributories as proved to it by any sufficient evidence, and may, if it thinks fit, direct meetings(i) of the creditors or contributories to be summoned, held and conducted in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

In the case of creditors, regard is to be had to the value of the debts due to each creditor, and, in the case of contributories to the number of votes conferred on each contributory by the regulations of the Company(ii).

Sec. 91 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 112 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See *rules 43—45 post*.

(ii) Sec. 193 *post*. A similar sec. as to winding-up under supervision.

This section is not confined to cases where a winding-up order has been made, but applies also when a petition for winding-up is before the Court. IN *RE Chapel House Colliery Co.*, 24 Ch. Div., 259.

See the cases under this section enumerated and classified, Buckley, 4th ed., 232—235, where others besides the following are collected :—

Two creditors of a Company were under this section appointed liquidators in the place of an official liquidator who had been appointed by the Court, upon motion made on behalf of a very large majority of the unsecured creditors of the Company, who alone were interested in the realization of the assets. IN *RE Association of Land Financiers*, 10 Ch. D., 269.

A petition for winding-up presented by one bond-holder was dismissed with costs, it being opposed to the wishes of the bond-holders other than the petitioner. IN *RE Uruguay, &c., Ry. Co. of Monte Video*, 11 Ch. D., 372.

In IN *RE Great Britain Mutual Life Assurance Society*, 16 Ch. Div., 246, where a committee of holders of policies in the Society desired that the Court should exercise the power given to it by sec. 22 of the *Life Assurance Companies' Act*, 1870, of reducing the amount of the contracts of the Society instead of making a winding-up order, the Court of Appeal discharged the winding-up order which had been made by the Court below, in order that a meeting of policy-holders should be summoned in order that their wishes should be ascertained.

In IN *RE Middlesbrough Assembly Rooms Co.*, 14 Ch. Div., 108. A winding-up order which had been made on the petition of a shareholder was discharged by the Court of Appeal, the winding-up being opposed to the wishes of the great majority of the shareholders. See this case *supra*.

In IN *RE Haven Gold Mining Co.*, 20 Ch. Div., 151, the Company was ordered to be wound-up, on the petition of two shareholders, although the large majority of the shareholders desired to continue to carry it on, the Court being satisfied that the subject-matter of the business for which it had been formed had substantially ceased to exist.

See also IN *RE German Date Coffee Co.*, 20 Ch. Div., 169.

In IN *RE Great Western Coal Consumers' Co.*, 21 Ch. D., 769; 51 L. J. Ch. D., 743, a petition by the representatives of a deceased creditor which was opposed by the majority of the creditors in value was ordered to stand over for six months, or until the petitioners took steps to enforce a charge which the creditors had on part of the Company's property, the Company undertaking to give notice in writing of any other winding-up proceedings, and not to wind-up voluntarily.

Not only the number of the creditors and the amount of their debts, but also the reasons they assign for opposing a winding-up order should be considered, *Ibid*.

Official Liquidators.

141. For the purpose of conducting the proceedings in winding-up a Company and assisting the Court therein there may be appointed a person or persons to be called an official liquidator or official liquidators. Appointment of official liquidator.

The Court may appoint such person or persons either provisionally or otherwise, as it thinks fit, to the office of official liquidator or official liquidators.

In all cases, if more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act hereby required or authorized to be done by the official liquidator is to be done by all any one or more of such persons.

The Court may also determine whether any, and what security(iii) is to be given by any official liquidator on his appointment.

If no official liquidator is appointed, or during any vacancy in such appointment, all the property of the Company shall be deemed to be in the custody of the Court.

A receiver shall not be appointed of assets in the hands of an official liquidator.

Sec. 92 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 113 of the Indian Companies' Act X. of 1866, *verbatim*; except the last paragraph, which is new, and as to which see *Perry v. Oriental Hotel Co.*, L. R. 5 Ch., 420; and *Campbell v. Compagnie Générale*, 2 Ch. D., 181.

Cf. also sec. 87 of Act XIX. of 1857.

(i) See rules 8-19 *post*; as to liquidators in a voluntary winding up see sec. 177, and also sec. 185 *post*, and secs. 194-196 *post*, as to liquidators in a winding-up subject to supervision.

(ii) Sec. 134, *supra*.

(iii) Rule 10, *post*.

For forms of orders appointing official and provisional liquidators, and of the recognizance of the official liquidator and his sureties, see Forms Nos. 8-10 *post*.

"The general rule of the Court is that, *ceteris paribus*, the person who is nominated by the petitioner will be appointed," Buckley, 4th ed., 237.

The wishes of the large majority of creditors as to the appointment of liquidators were consulted in *IN RE Association of Land Financiers*, 10 Ch. D., 269, where two creditors were appointed liquidators.

The practice is to appoint the liquidator in Chambers, *RE General Financial Co.*, 20 Ch. Div., 276.

Where two official liquidators are appointed, they must agree upon one solicitor to present both, *ex parte Bass*, 1 De G. and S., 722.

Resignations,
removals,
filling up
vacancies
and com-
pensation.

142. Any official liquidator may resign or be removed by the Court on due cause shown(i). Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court(ii). There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and, if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs(iii).

Sec. 93 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 114 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 90 of Act XIX. of 1857.

- (i) Cf. sec. 185, *post*.
- (ii) Sec. 185, 194 *post*, and rule 16, *post*.
- (iii) Sec. 177 (c) *post*, and rule 18, *post*.

For the regulations in England regarding the remuneration of official liquidators, see Buckley, 4th ed., 240.

In *IN RE The New Fleming, New Alexandra, Narsi, and The Colaba Mill Companies* (not reported), an application by summons by the official liquidators to have their remuneration increased from one to two per cent. on the amount of the assets realised by them, was on the 28th July 1882 refused by *Bayley, J.* The application was opposed by creditors to a large amount. It appeared that the applicants had originally offered and agreed to take one per cent. commission, and had been appointed on those terms. His Lordship, in delivering judgment, said that the liquidator's counsel had not relied upon the fact that the liquidators had done well for the Companies, no doubt in consequence of the decision of *Gifford, V. C.*, in *RE Agra and Masterman's Bank, Cannan's claim*, L. R. 7 Eq. 102, but had relied on what he stated were two precedents in which the Court had increased the remuneration of liquidators—*IN RE Bombay Joint Stock Corporation* and *IN RE the Hemp and Jute Mill Co.*, the latter of which came before *Mr. Justice Green* in July 1879 (neither of which cases are reported). But in the opinion of *Bayley, J.* these cases had no application to the one before him. The practice in Bombay had been to fix remuneration of official liquidators on their appointment, and rule 17 of the rules framed by the Judges of Bombay in August 1866 was the one applicable to the present case.

The remuneration of the liquidators had been fixed on the 1st February 1879, the date of their appointment, and nothing that had since taken place rendered it, in his Lordship's opinion, at all just or equitable that the liquidators should be paid as from the commencement at the rate of two per cent. instead of at the rate at which they had agreed to do the work, and which unquestionably had not occupied the whole of their time, as they had undertaken the liquidation of another Company in June 1879.

The liquidators were directed to pay their own costs. The costs of the successful creditors in opposition to the summons were to be paid in full out of the assets of the Companies. Certain other opposing creditors were directed to bear their own costs, and the costs allowed as above were to be taxed as between party and party, and as if the matter had been a long cause in Court.

143. The official liquidator shall be described by the style of the official liquidator of the particular Company in respect of which he is appointed, and not by his individual name. He shall take into his custody, or under his control, all the property, effects and actionable claims to which the Company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the Company as may be imposed by the Court(i).

Style and
duties of
official
liquidator.

Sec. 94 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 115 of the Indian Companies' Act X. of 1866, *verbatim*, save that these sections insert the words "or liquidators" after "official liquidator," and correspond throughout to this addition.

Cf. sec. 88 of Act XIX. of 1857.

(i) By section 247 *post*, in the case of an unregistered Company, a vesting order may be made.

"The effect of a winding-up order is to constitute the official liquidator a trustee of the property of the Company for the creditors of the Company who were creditors at the time of the winding-up. The order therefore, prevents the Statute of Limitations from running against a creditor neglecting to prove his debt within the proper time." Buckley, 4th ed. 241.

See sec. 159, *post*, as to a creditor who does not prove within the time limited for that purpose.

The powers of a liquidator of a limited Company are more extensive than those of the Company prior to the winding-up order; for instance, he can assert as against members of the Company rights which the Company itself could not have asserted; *IN RE National Funds Assurance Co.*, 10 Ch. D., 118, where *Jessel, M. R.*, approves the *dictum* of Lord *Hatherley* in *Waterhouse v. Jamieson*, L. R. 2 H. L. sec. 32.

Consider also Mr. Buckley's note to this section on this point, 4th ed. 242.

When, however, the Company, having confirmed and taken the benefit of a transaction, could not impeach it, the liquidator had no better right; *IN RE Dronfield Silkstone Coal Co.*, 17 Ch. Div., 76.

As to the right to discovery from the liquidator and the liquidators' liability for costs, see Buckley, 4th ed., 243.

See *IN RE City and Country Investment Co.*, 13 Ch. Div., 475, and *IN RE Silver Valley Mines*, 21 Ch. Div., 381, for the rules as to the costs of official liquidators on appeal.

In *Beris v. Turner*, I. L. R. 7 Bom. 484, it was held that if the official assignee defends a suit and fails he is liable to pay the plaintiff's costs, and if the estate is insufficient, he will have to bear them personally. To protect himself he should get an indemnity from the parties who set him in motion.

Power of
official
liquidator.

144. The official liquidator shall have power, with the sanction of the Court(i), to do the following things:—

(a) to bring or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the Company(ii);

(b) to carry on the business of the Company so far as may be necessary for the beneficial winding-up of the same(iii);

(c) to sell the immoveable and moveable property of the Company by public auction or private contract, with power to transfer the whole thereof to any person or Company, or to sell the same in parcels(iv);

(d) to do all acts, and to execute, in the name and on behalf of the Company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the Company's seal;

(e) to prove, rank, claim and draw a dividend, in the matter of the insolvency of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of the insolvency, as a separate debt due from such insolvent, and rateably with the other separate creditors;

(f) to draw, accept, make and endorse any bill of exchange, hundi or promissory note in the name and on behalf of the Company^(v); also to raise, upon the security of the assets of the Company, from time to time, any requisite sum or sums of money; and the drawing, accepting, making or endorsing of every such bill, hundi, or note as aforesaid on behalf of the Company shall have the same effect with respect to the liability of such Company as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of such Company in the course of carrying on the business thereof;

(g) to take out, if necessary, in his official name, letters of administration to the estate of any deceased contributory^(vi), and to do, in his official name, any other act that may be necessary for obtaining payment of any monies due from a contributory or from his estate, and which act cannot be conveniently done in the name of the Company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any monies due from a contributory, such monies shall, for the purpose of enabling him to take out such letters or recover such monies, be deemed to be due to the official liquidator himself: Provided that nothing herein contained shall be deemed to affect the rights, duties and privileges of the Administrators General of Bengal, Madras and Bombay respectively;

(h) to do and execute all such other things as may be necessary for winding-up the affairs of the Company and distributing its assets^(vii).

Sec. 95 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, *mutatis mutandis*; and sec. 116 of the Indian Companies' Act X. of 1866, *verbatim*, save that the present section omits the words "and officiating Administrators General" after "Administrators General" which are in sec. 116 of Act X. of 1866, which are now unnecessary: see sec. 13 of The Administrator General's Act II. of 1874.

Cf. sec. 89 of Act XIX. of 1857.

- (i) Sec. 145, *post*; rules 46, 48, *post*.
- (ii) Sec. 247, *post*, as to vesting order in the case of unregistered Companies.
- (iii) Sec. 197, *post*; cf. also sec. 175, *post*.
- (iv) Sec. 204, *post*; rule 32, *post*.
- (v) Sec. 72, *supra*; rule 46, *post*.
- (vi) Sec. 126, *supra*; 154, *post*.
- (vii) See secs. 201—205, *post*.

This sec. is by virtue of sec. 246, *post*, applicable to unregistered Companies, which are being wound-up under sec. 243, *post*.

Clause (a). Where in a winding-up, strangers to the Company, who were neither creditors nor contributories, and who had no charge upon the assets of the Company, had obtained leave to institute proceedings, in the name of the Company, against the directors to recover certain sums of money from them, the Court of Appeal held that there was no jurisdiction to give such leave, and the action must be dismissed as having been instituted without authority, and the persons bringing it must pay the costs of all parties, including the official liquidators; the costs of the Company being taxed as between solicitor and client, and the other costs as between party and party. *Cope Breton Co. v. Fenn*, 17 Ch. Div., 198.

Clause (b). When the plaintiff Company let railway wagons to the defendant at a yearly rent and then went into liquidation, and the liquidators joined the Company in assigning the benefit of the contract to another Company, it was held under the corresponding clause in sec. 95 of the English Companies' Act, 1862, that they had power to continue the letting of the wagons, *British Wagon Co. v. Lea*, 5 Q. B. D., 149.

But to give the Court jurisdiction to sanction a contract by the liquidator it must be shown that its object is the beneficial winding-up of the Company, and that it is highly expedient for that purpose. When therefore (in a creditor's liquidation) the object of a proposed business contract was to facilitate the reconstruction of the Company, it was held that the Court had no jurisdiction to sanction the contract; *IN RE Wreck Recovery and Salvage Co.*, 15 Ch. Div., 353, per *Thesiger, L. J.*, at p. 362. "The word 'necessary' imports what may be called a mercantile necessity, something which would be highly expedient under all the circumstances of the case for the beneficial winding-up of the Company." And see *IN RE Commercial Bank Corporation*, 1 Ind. Jur. N. S., 355, where the provisional liquidator of a joint stock bank was allowed to advance money for the purposes of a plantation which had been mortgaged to it.

In *IN RE Asphaltic Wood Pavement Co., Lee and Chapman's case*, 26 Ch. D., 624, the provisional official liquidator was ordered and empowered to complete the contract entered into by the Company, and was held entitled to a first charge on the monies payable under the contract for the cost of completing the work incurred by him since the winding-up.

Clause (c). "Moveable and immoveable property" correspond to the words "real and personal and heritable and moveable property, effects and things in action" in the English Companies' Act. As to "things in action" see *IN RE Park Gate Wagon Works Co.*, 17 Ch. Div., 234, where claims against directors for misfeasance were held to be

"things in action." By sec. 2 of Act I. of 1868 (General Clauses Act, 1868) cl. 6, "moveable property means property of every description except immoveable property, "which" (by cl. 5) "shall include land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth."

Clause (f). By section 177 *post*, the same or perhaps wider powers are conferred on liquidators appointed under a voluntary winding-up.

Clause (g). As to the Administrators General of Bengal, Madras and Bombay, see Act II. of 1874, and IX. of 1881.

Clause (h). A liquidator may on behalf of a Company waive an informality in a notice under sec. 204, *post*. See *IN RE Fleming S. and W. Co. I. L. R. 6 Bom. 494*.

As to the powers of liquidators to assert new rights in the winding-up of a Company, see Buckley 4th ed., pp. 108, 109, 359, and the cases there cited.

145. The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and where an official liquidator is provisionally appointed(i), may limit and restrict(ii) his powers by the order appointing him. Discretion of official liquidator.

Sec. 96 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 117 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Sec. 134, *supra*.

(ii) Cf. Sec. 195, *post*.

For the form of the order under this section, see *IN RE Rochdale Property, &c., Co.*, 12 Ch. D., 775.

146. The official liquidator may with the sanction of the Court, appoint an attorney or vakil to assist him in the performance of his duties: Provided that, where the official liquidator is an attorney, he shall not appoint his partner, unless the latter consents to act without remuneration (i). Appointment of attorney or vakil to official liquidator.

The first paragraph corresponds with sec. 97 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting "solicitor or law agent" for attorney or vakil; and sec. 118 of the Indian Companies' Act X. of 1866, *verbatim*.

The proviso adopts the decision in *IN RE Universal Private Telegraph Co.*, 19 W. R. 297 L. T., 884.

(i) See note to rule 62, *post*; and Form No. 12, *post*.

Ordinary Powers of Court.

147. As soon as may be(i) after making an order for winding-up the Company, the Court shall settle a list of contributories(ii), with power to rectify the register of members in all cases where such rectification is required in pursuance of section fifty-eight(iii), and shall cause the assets of the Company to be Collection and application of assets.

collected and applied in discharge of its liabilities existing at the date of the said order (iv).

Sec. 98 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 119 of the Indian Companies' Act X. of 1866, substituting the words "section fifty-eight" for "this Act" in those sections, and adding the words "existing at the date of the said order."

Cf. sec. 73 of Act XIX. of 1857.

(i) Sec. 61, *supra*.

(ii) Sec. 61; rules 29—31, *post*.

(iii) See sec. 58, *supra*, and notes thereto, p. 49.

(iv) As to the words "existing at the date of the said order" which are added to this sec., see secs. 143, *supra*, and 177, *infra*, and *IN RE United Ports Co. ex parte Etna Co.*, 36 L. T., 457.

See sec. 53 *supra* (corresponding with sec. 35 of the English Companies' Act).

Where a transfer which was made fifteen months before the winding-up was valid and effectual, and the rights of creditors had intervened, rectification of the register was refused. *Cree v. Somervail*, 4 Ap. Ca., 648.

For a case where the official liquidator was not able to place either bankrupt shareholders or their trustees who had disclaimed under the English Bankruptcy Act of 1869, s. 23, on the list of contributories, see *IN RE West of England Bank ex parte Budden and Roberts*, 12 Ch. D., 288.

Where a Company are estopped by their own conduct from disputing a transfer, the Court has no jurisdiction to do that in the winding-up for the Company which the Company have no right to do for themselves, *Chynoweth's case*, 15 Ch. Div., 13, where the Company, a cost-book mine, were not allowed to set aside the transfer which had been acted upon by themselves.

"Where an alleged contributory contests his liability, and asserts that, by reason of a transfer or otherwise, some one else is liable in his stead, he ought in general to bring before the Court the person whose name he says ought to be substituted for his own," Buckley, 4th ed., 250.

As to payment of costs by persons disputing their liability as contributories, see Buckley, 4th ed., 251.

In *IN RE Mutual Society*, 18 Ch. D., 530, *Jessel, M. R.* declined to allow the costs of the parties as between attorney and client in a representative case for the opinion of the Court in a winding-up, and allowed them as between party and party only, not following *Part's case*, L. R. 10 Eq., 622, on this point.

As to payment of the assets of the Company into the Bank, &c., see rules 36, 42, *post*, and as to proof of debts, see rules 20—28 *post*.

Provision as to representative contributories.

148. In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right, and persons who are contributories as being representatives of, or being liable to the debts of, others.

Sec. 99 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 120 of the Indian Companies' Act X. of 1866, *verbatim*.

The English sec. continues thus :—

“ It shall not be necessary, where the personal representative of any deceased contributory is placed on the list, to add the heirs or devisees of such contributory, nevertheless such heirs or devisees may be added as and when the Court thinks fit.” Under the Succession Act X. of 1865, sec. 179, as regards persons domiciled in India to whom that Act applies, all property, whether moveable or immoveable, vests in the executor or administrator. See also sec. 4 of the Probate and Administration Act V. of 1881.

(i) See sec. 126 *supra*, and rules 29—31, *post*.

149. The Court may, at any time after making an order for winding-up a Company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker or agent or officer of the Company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the Court directs, to or into the hands of the official liquidator(i), any sum or balance(ii), books, papers(iii), estate or effects which happen to be in his hands for the time being, and to which the Company is *prima facie* entitled(iv). Power of Court to require delivery of property.

Sec. 100 of the English Companies' Act (25 and 26 Vic., c. 89), 1862 ; and sec. 121 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Sec. 152, *post*.

(ii) Cf. sec. 214, *post*.

(iii) See sec. 162, *post*.

(iv) See Form No. 13, *post*.

“ This section is applicable only to the contributories and officers of the Company, and ought not to be extended to include other persons,” Buckley, 4th ed., 258.

150. The Court may, at any time after making an order for winding-up the Company, make an order(i) on any contributory for the time being settled on the list of contributories directing payment to be made, in manner in the said order mentioned, of any monies due from him or from the estate of the person whom he represents to the Company, exclusive of any monies which he, or the estate of the person whom he represents, may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this part of this Act(ii). Power of Court to order payment of debts by contributory.

The Court may, in making such order, when the Company is not limited, allow to such contributory, by way of set-off, any monies due to him or the estate which he represents from the Company on any independent dealing or contract with the Com-

pany, but not any monies due to him as a member of the Company in respect of any dividend or profits.

Provided that, when all the creditors of any Company, whether limited or unlimited, are paid in full, any monies due on any account whatever to any contributory from the Company may be allowed to him by way of set-off against any subsequent call or calls(iii).

In the event of the winding-up of any limited Company, the Court, if it thinks fit, may make to any director or manager of such Company whose liability is unlimited the same allowance by way of set-off as under this section it may make to a contributory where the Company is not limited(iv).

The first three paragraphs correspond with sec. 101 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 122 of the Indian Companies' Act X. of 1866, *verbatim*. The last paragraph corresponds with sec. 6 of the English Companies' Act (30 and 31 Vic., c. 131), 1867.

Cf. also 11 and 12 Vic., c. 45, s. 66.

(i) See Form No. 13, *post*.

(ii) See sec. 151, *post*.

(iii) See sec. 61 (g) *supra*.

(iv) See sec. 7, *supra*.

As to the effect of this section and as to set-off in winding-up generally, see Buckley, 4th ed., pp. 255, 256.

This question of set-off of a debt due from the Company against calls was fully considered by *Jessel, M. R.*, in *IN RE Whitehouse and Co*, 9 Ch. D., 595, where it was held that when a limited Company is in voluntary liquidation, a contributory cannot set-off a debt due to him from the Company against calls made against him either by the Company before, or by the liquidator after, the resolution to wind-up.

The following conclusions may be derived from that case :—

(a) Under sec. 38 of the English Companies' Act [which corresponds with sec. 61 *supra*], calls made in a winding-up, being calls for something unpaid on the shares, are not a debt due to the Company, but a contribution due by the member.

(b) Unpaid calls made before the winding-up, though a debt due to the Company, are not the less an amount unpaid on the shares in respect of which the member is liable, and therefore he must be liable to contribute all that is unpaid on his shares.

(c) The contribution due from the member is a contribution to the assets enforceable by the liquidator and not at all a debt, and there is no question of set-off as between calls, that is, the amount unpaid on the shares, and a debt due by the Company to the contributory.

(d) The 101st sec. of the English Act [which corresponds with the present section], raises the implication, though upon the principles above stated it is not really wanted, that there is no set-off to be allowed in the case of a limited Company for a sum of money due from the Company to a person liable to the Company.

(e) This section applies to a winding-up by the Court ; to a winding-up voluntarily ; and to a voluntary liquidation under the supervision of the Court.

See also *IN RE General Works Co., Gill's case*, 12 Ch. D., 755.

151. The Court may, at any time after making an order for winding-up a Company, and either before or after it has ascertained the sufficiency of the assets of the Company, make calls(i) on, and order payment thereof by, all or any of the contributories, for the time being settled on the list of contributories to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the Company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves.

Power of Court to make calls.

The Court may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same(ii).

Sec. 102 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 123 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. also sec. 79 of Act XIX. of 1857.

(i) See sec. 166, *infra*; rules 33—35, *infra*.

(ii) Sec. 177 (i) *post*, calls in voluntary winding-up.

See sec. 61, *supra*, and note thereto, with reference to the liability of present and past members.

As to interest on calls if not paid, see sched. I., table A, cl. 6, *post*.

"Persons who are on the register of shareholders at the commencement of the winding-up, having thereby incurred a *prima facie* legal liability, are not entitled to resist the making of a call on the ground that they assert a right to have their names removed from the list; but their remedy is to apply for the suspension of the operation of the call as against themselves," Buckley, 4th ed., 253.

152. The Court may order any contributory, purchaser or other person from whom money is due to the Company to pay the same into the Bank of Bengal, the Bank of Madras or the Bank of Bombay, as the case may be, or any branch thereof respectively, to the account of the official liquidator instead of to the official liquidator; and such order may be enforced(i) in the same manner as if it had directed payment to the official liquidator(ii).

Power of Court to order payment into Bank.

Sec. 103 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting the Bank of Bengal, Madras or Bombay for "the Bank of England or any branch thereof" in that Act; and sec. 124 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 82 of Act XIX. of 1857.

(i) See rule 38, *post*.

(ii) See sec. 149, *supra*, and rules 11, 32, 36—39, *post*.

Regulation
of account
with Court.

153. All monies, bills, hundis, notes and other securities paid and delivered into the Bank of Bengal, the Bank of Madras, or the Bank of Bombay, or any branch thereof respectively, in the event of a Company being wound up by the Court, shall be subject to such order and regulation for the keeping of the account of such monies and other effects, and for the payment and delivery in, or investment and payment and delivery out, of the same as the Court may direct(i).

Sec. 104 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting the Bank of Bengal, Madras and Bombay for "the Bank of England or any branch thereof"; and sec. 125 of the Indian Companies' Act X. of 1866, adding the word "hundis."

(i) See rules 36—41 *post*.

Provision
in case of re-
presentative
contributory
not paying
monies
ordered.

154. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the property of such deceased contributory, whether moveable or immoveable, or both, and of compelling payment thereof of the monies due(i).

Sec. 105 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting moveable and immoveable property for "personal and real estates" in that Act; and sec. 126 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See secs. 126, and 144 (g) *supra*.

Order
conclusive
evidence.

155. Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order (i), be conclusive evidence that the monies, if any, thereby appearing to be due or ordered to be paid are due; and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons and in all proceedings whatsoever.

Sec. 106 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, which however concludes thus: "with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be *prima facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made"; and sec. 127 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Sec. 169, *post*.

See note to sec. 148, *supra*.

156. The Court may fix a certain day or certain days on or within which creditors of the Company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved. Court may exclude creditors not proving within certain time.

Sec. 107 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 128 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 83 of Act XIX. of 1857.

See rules 20—28 *infra*.

In *IN RE Kit Hill Tunnel ex parte Williams*, 16 Ch. D., 590, a secured creditor, who had not assessed the value of his security, was allowed to come in and prove for the unsecured balance of his debt, on the terms of his disturbing no past dividend; and see *Hicks v. May*, 13 Ch. Div., 236.

In the English Companies' Act, 1862, there follows sec. 108, which relates to proceedings in the Court of the Vice-Warden of the Stannaries on proof of debts.

157. The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto. Court to adjust rights of contributories.

Sec. 109 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 129 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 85 of Act XIX. of 1857.

Under this section the Court will not enforce equities which persons, who, as tortfeasors (being also contributories) have been ordered to pay money under section 214, *post*, may have against other persons, who happen also to be contributories, to compel them to make good the money so ordered to be paid: the Court will only adjust the rights of contributories *quâ* contributories. In *RE Alexandra Palace Co.*, 23 Ch. D., 297.

Notwithstanding a limitation in the memorandum of association of a mutual insurance Company upon the liability of its members as members, they may be liable as insurers or as assured beyond that limit. See *Lion Assurance Association v. Tucker*, 12 Q. B. Div., 176, referred to *supra*, p. 8.

158. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the Company of the costs, charges and expenses incurred Court to order costs.

in winding-up any Company in such order of priority as the Court thinks just(i).

Sec. 110 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 130 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 86 of Act XIX. of 1857.

(i) See sec. 188, *post*, as to the costs of a voluntary winding-up.

"In England the rule of the Court is that in the first place the costs of the petition for winding-up are to be paid out of the assets, next the costs of the winding-up, and then the remuneration of the Official Liquidator." Buckley, 4th ed., 264, and cases there cited; and see Palmer's Precedents, 3rd ed., p. 517.

The section applies to costs incurred by the liquidator in the course of the winding-up, and the Court has no discretion to order payment of anything except legal demands on the Company, see *IN RE Hull Central Drapery Co.*, 15 Ch. Div., 326, cited *supra*.

Priority in case of insufficiency of assets.

In *IN RE Dronfield Silkstone Coal Co.* (No. 2) 23 Ch. D., 511, *Chitty J.* held that where the assets of a Company in compulsory liquidation are insufficient for payment of the costs of winding-up, the official liquidator is not entitled to any remuneration; and that where in the compulsory winding-up of a Company the assets are insufficient for the payment in full of costs, the costs of realisation are payable out of the assets in priority to costs incurred in internal litigation, and these latter costs, including those of the liquidator, are payable rateably, without regard to priority in the dates of the orders under which such costs have been directed to be paid; not followed in *Dominion of Canada Co.* 27 Ch. Div. 33.

Dissolution of Company.

159. When the affairs of the Company have been completely wound-up, the Court shall make an order that the Company be dissolved from the date of such order, and the Company shall be dissolved accordingly(i).

Sec. 111 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 131 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 91 of Act XIX. of 1857.

(i) See rules 60-62, *post*, and Form No. 49, *post*; and sec. 187, *post*, as to voluntary winding-up.

See *IN RE Carwar Co.*, I. L. R., 6 Bom. 640, cited in notes to sec. 187 and 195, *post*.

Registrar to make minute of dissolution of Company.

160. Any order so made shall be reported by the official liquidator to the Registrar, who shall make a minute accordingly in his books of the dissolution of such Company.

Sec. 112 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 132 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 92 of Act XIX. of 1857.

"Official Liquidator" does not include the liquidators in a winding-up under supervision, see *IN RE Carwar Co.*, I. L. R. 6 Bom. 640.

Penalty for not reporting dissolution of Company.

161. If the official liquidator makes default in reporting to the Registrar, in the case of a Company

being wound up by the Court, the order that the Company be dissolved, he shall be liable to a penalty not exceeding one hundred rupees for every day during which he is so in default.

Sec. 113 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting "one hundred rupees" for "five pounds" in that section; and sec. 133 of the Indian Companies' Act X. of 1866, *verbatim*.

In the English Companies' Act of 1862 here follows section 114, providing that a duly registered petition for winding-up by the Court shall constitute a *lis pendens* within the terms of 2 and 3 Vic., c. 11. The section however is repealed by 30 and 31 Vic., c. 47 s. 1, from the passing of that Act.

Extraordinary Powers of Court.

162. The Court may, after it has made an order for winding-up the Company, summon(i) before it any officer(ii) of the Company, or person known or suspected to have in his possession any of the estate or effects(ii) of the Company, or supposed to be indebted to the Company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate or effects(iii) of the Company.

Power of Court to summon persons before it suspected of having property of Company.

If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting and allowed by it), the Court may cause such person to be apprehended and brought before the Court for examination(iii).

The Court may require any such officer or person to produce any documents(ii) in his custody or power relating to the Company. Nevertheless, in cases where any person claims any lien on documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien.

Sec. 115 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting "documents" for "books, papers, deeds, writings, or other documents" in that section; and sec. 134 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 75 of Act XIX. of 1857.

(i) See Form No. 47, *post*.

(ii) See sec. 149, *supra*; and sec. 214, *post*.

(iii) See sec. 163, *post*.

As to who is a person capable of giving information in reference to the assets of the Company, see *Massey v. Allen*, 9 Ch. D., 164.

Appeal from
order.

The Court of Appeal will not interfere, unless in an extreme case, with the discretion of the judge in the Court below, who has summoned a person for examination under this section, *IN RE Gold Co.*, 12 Ch. Div., 77. And *semble*, a person so summoned to be examined has no *locus standi* to appeal against the order directing him to attend for examination, *ibid*.

In *Whitworth's case*, 19 Ch. Div., 118, it was held that if the jurisdiction to order his examination exists the witness has no *locus standi* to appeal against the order.

Liquidator's
right.

A voluntary liquidator who applies to the Court, under sec. 138 of the English Companies' Act, 1862 [which corresponds with sec. 182, *post*], for an order under this section to examine a person in respect of the affairs of the Company, is not entitled as of right to the order, but must satisfy the Court that it will be just and beneficial for the purposes of the winding-up. And if he has brought an action on behalf of the Company against an officer of the Company, and has administered interrogatories which have been fully answered by the defendant, he will not be entitled to an order under this section for the examination of the defendant, unless he satisfies the Court that, notwithstanding the interrogatories already administered, he has a strong case for a further examination, *IN RE Metropolitan Bank, Hieron's case*, 15 Ch. Div., 139. Cf. *ex parte Nicholson*, *IN RE Wilson*, 14 Ch. Div., 203.

Discretion of the
Court.

The examination under this section is as a general rule entrusted to the liquidator, but it is discretionary with the Judge whether he will entrust either the whole or any part of the examination to creditors or contributories, and whether he will or will not confine the examination within certain limits, *Whitworth's case*, 19 Ch. D., 118.

The Court has a discretion to allow admitted creditors of a Company in course of winding-up, to attend the examination of witnesses under this section. *IN RE Greys Brewery Co.*, 25 Ch. D., 400, where *Chitty, J.* enunciates the object and scope of the section.

Witness
assisted by
Counsel.

As to the right of the person summoned to have counsel and solicitor present on his behalf, and to be re-examined for the purpose of explaining his examination in chief, see *IN RE Cambrian Mining Co.*, 20 Ch. D., 376. Notes of his examination may also be taken and carried away, but they must only be used for the purpose of the re-examination, *ibid*.

In *IN RE Nursey Kessowjee and Co.*, I. L. R. 3 Bom. 270; it was held that a witness summoned under the analogous section (36) of the Indian Insolvent Act (11 and 12 Vic., c. 21), could not claim the assistance of counsel as of right; but counsel might properly be allowed to attend under special circumstances.

As to the discretion of the Court to order the production of documents by a witness summoned under the analogous section (96) of the English Bankruptcy Act (32 and 33 Vic., c. 71), 1869, see *ex parte Tutton*, *IN RE Thorp*, 17 Ch. Div., 512.

And as to a witness summoned under the last-mentioned Act refusing to answer, upon the ground that he might thereby criminate himself, see *ex parte Reynolds*, *IN RE Reynolds*, 20 Ch. Div., 294 [in England]. In India the rule is different, see secs. 132, 146 of the Evidence Act I. of 1872.

Lien of
Solicitor.

If a solicitor receives documents pending the liquidation of a Company he cannot claim to retain them by virtue of his lien, so as to interfere with the due prosecution of the liquidation and the due carrying out of the duties of the liquidator. *IN RE Capital Fire Insurance Association*, 24 Ch. Div., 408.

In the English Companies' Act, 1862, here follows a section (116) containing special provisions as to the Court of the Vice-Warden of the Stannaries.

163. The Court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before it in manner aforesaid(i), concerning the affairs, dealings, estate or effects of the Company, and may reduce into writing the answers of every such person, and require him to subscribe the same. Examination of parties by Court.

Sec. 117 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 135 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Under section 162.

By sec. 2 (Cl. 17) of the General Clauses Act I. of 1863, "oath" "swear" and "affidavit" shall include affirmation, declaration, affirming and declaring in the case of persons allowed by law to affirm or declare instead of swearing.

As to interrogating a member of a Company which is a party to an action, see *Berkeley v. Standard Discount Co.*, 9 Ch. D., 643.

"Affairs" in this section is substituted for "trade" in the preceding section, and makes this section rather wider, see *Massey v. Allen*, 9 Ch. D., 168.

164. The Court may, at any time before or after it has made an order for winding-up a Company, upon proof being given that there is probable cause for believing that any contributory(i) to such Company is about to quit British India or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the Company, cause such contributory to be arrested, and his books, papers, monies, securities for monies, goods and chattels to be seized, and him and them to be safely kept until such time as the Court may order. Power to arrest contributory about to abscond or to remove or conceal any of his property.

Sec. 118 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting "British India" for "United Kingdom" in that section; and sec. 136 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Sec. 124, *supra*.

Claims upon the immoveable property of a contributory are not dealt with by this section, but must be dealt with according to the general law. See *Buckley*, 4th ed., 274.

165. Any powers by this Act conferred on the Court shall be deemed to be in addition to, and not in restriction of, any other powers subsisting of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the Company, for the recovery of any call or other Powers of Court cumulative.

sums due from such contributory or debtor, or his estate; and such proceedings may be instituted accordingly.

Sec. 119 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 137 of the Indian Companies' Act X. of 1866, *verbatim*.

Enforcement of, and Appeal from, Orders.

Power to
enforce
orders.

166. All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced.

Sec. 120 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, directs that all orders made by the Court of Chancery under that Act may be enforced in the same manner as orders of that Court in any suit pending therein, and adds a provision with reference to the Court of the Vice-Warden of the Stannaries; sec. 138 of the Indian Companies' Act X. of 1866, *verbatim*.

As to enforcement of decrees see the Civil Procedure Code XIV. of 1882, Chap. XIX. ss. 223—343.

In the English Companies' Act, 1862, here follows section 121, which gives a power to the Courts in Scotland to order contributories in Scotland to pay calls.

Order made
in any Court
to be
enforced by
other Courts.

167. Any order made by a Court for or in the course of the winding-up of a Company under this Act shall be enforced in any part of British India, other than that in which such Court is situate in the Court that would have had jurisdiction in respect of such Company if the registered office of the Company had been situate in such other part, and in the same manner in all respects as if such order had been made by the Court that is hereby required to enforce the same.

Cf. sec. 122 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, which provides for orders made in England being enforced in Ireland and Scotland; sec. 139 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. the provisions in the Civil Procedure Code for the execution by one Court of decrees passed by another. Act XIV. of 1882. Chap. XIX. A.

In *IN RE the City of Glasgow Bank*, 14 Ch. D., 628, *Jessel, M. R.* directed (following *IN RE Hollyford Copper Mining Co.*, L. R. 5 Ch., 93) that where an order for a call had been made by the Court of Session in Scotland in the winding-up of a Company by that Court, and it became necessary to enforce the call against contributories resident in England, the order should be made an order of the Chancery Division in England.

168. Where any order or decree made by one Court is required to be enforced by another Court as hereinbefore provided(i), a certified copy of the order or decree so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order or decree having been made; and thereupon such last-mentioned Court shall take such steps in the matter as may be requisite for enforcing such order or decree, in the same manner as if it were the order or decree of the Court enforcing the same.

Mode of dealing with orders to be enforced by other Courts.

Sec. 123 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, omitting the word "interlocutor," and substituting "certified copy" for "office copy," in that section; and sec. 140 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Sec. 167, *supra*.

169. Re-hearings of, and appeals from, any order or decision made or given in the matter of the winding-up of a Company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction; subject to this restriction, that no such re-hearing or appeal shall be heard unless notice of the same is given within three weeks after any order complained of has been made, in manner in which notices of appeal are ordinarily given under the Code of Civil Procedure, unless such time is extended by the Court of Appeal.

Appeals from orders.

Sec. 124 of the English Companies' Act (25 and 26 Vic., c. 39), 1862, substituting the words "ordinarily given under the Code of Civil Procedure" for "ordinarily given according to the practice of the Court appealed from," and omitting the proviso in that section with reference to the Lord Warden of the Stannaries; and sec. 141 of the Indian Companies' Act X. of 1866, *verbatim*.

As to re-hearings and appeals under the Code of Civil Procedure, see Chap. XLI. of that Code XIV. of 1892; as to the period of limitation for the same, the Limitation Act XV. of 1877, sched. II. No. 151, provides that the period of limitation from a decree or order of the High Courts in the exercise of their original jurisdiction is 20 days from the date of the decree or order; for appeals under the Code to the Court of a District Judge, 30 days from the date of the decree or order, and section 5 of that Act provides for the extension of the time for appealing.

See also the Rules as to appeals in Bombay, *post*, appendix.

Notice of appeal should be given to the respondents within the time specified in this section.

"In England the practice is that notices [under sec. 124 of the Companies' Act, 1862], are served by the appellant or his attorney, so that if the notice is not given within the proper time, the appellant has only himself to blame. But in India, under the Civil Procedure Code, the service is effected by the Court, so that the appellant's right of appeal depends not on himself, but upon whether the officer of the Court performs his duty. . . . The notice is, of course, intended for the benefit of the other parties who are interested in the winding-up proceedings, and to prevent these proceedings being unduly delayed. The appellant's proper course clearly was to ascertain whether the notice had been served within the three weeks; and if he found that it had not, he should have applied to this Court at the earliest opportunity to extend the time for giving it." *Garth, C. J.*, in *IN RE The Sarawak and Hindustan Banking and Trading Co.*, 1. L. R. 4 Calc. 704, 3 Calc. R 581; where the Court declined also to extend the time.

The absence of a person whose position, had he been present at the appeal, might have been affected, will not prevent the Appeal Court from doing justice to the appellant before them. *IN RE Duchess of Westminster Silver Lead Ore Co.*, 10 Ch. Div., 307 (*Thesiger, L.J.*, however, dissenting).

As a general rule, an application to discharge an order made in Chambers to place a person on the list of contributories should be made within the three weeks limited for bringing an appeal, *IN RE Elham Valley Ry. Co.*, *Dickson's case*, 12 Ch. D., 298.

In *IN RE Diamond Fuel Co.*, 13 Ch. Div., 400, the Company was allowed to appeal against a winding-up order, although a liquidator had been appointed.

The liquidator in a voluntary winding-up if desirous of appealing from a decision of a Judge, should first obtain leave from the Judge; otherwise if his appeal fails he may be refused his costs out of the estate. *IN RE City and Country Investment Co.*, 13 Ch. Div., 475.

Principles on which Court will grant extension of time for appealing.

Where a resolution to wind-up voluntarily was passed but was invalid, and a supervision order was made subsequently, in ignorance of the invalidity of the resolution; and five months afterwards the petitioners discovered its invalidity and moved before the Vice-Chancellor for a compulsory order, which however he refused on the ground of want of jurisdiction to re-hear the petition; from which refusal petitioners appealed and also applied to the Court of Appeal for leave to appeal against the original order, notwithstanding the lapse of time; the Court of Appeal held that the mistake as to the validity of the resolution formed a special ground for the application, and the respondents had no equity to resist it. *IN RE Manchester Economic Building Society*, 24 Ch. Div., 488; per *Brett, L. J.*, p. 497, "I know of no rule other than this, that the Court has power to give the special leave, and exercising the judicial discretion is bound to give the special leave, if justice requires that leave should be given." See also per *Cotton, L. J.*, p. 499.

Judicial notice to be taken of signature of officers.

170. In all proceedings under this part of this Act, every Court, Judge and person judicially acting, and all other officers, judicial or ministerial, of any Court, or employed in enforcing the process of any Court, shall take judicial notice of the signature of any officer of any other Court, and also of the official seal of any other Court, when such seal is appended to any document made, issued or signed under the

provisions of this part of this Act, or any official copy thereof.

Sec. 125 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, *mutatis mutandis*; and sec. 142 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 57 (6) of the Indian Evidence Act I. of 1872.

171. The Judges of the District Courts, who sit at places more than twenty English miles from the usual place of sitting of the High Court, shall be Commissioners for the purpose of taking evidence under this Act in cases where any Company is wound-up in a High Court; and it shall be lawful for the High Court to refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed Commissioner, although such Commissioner is out of the jurisdiction of the Court that made the order or decree for winding-up the Company.

Special Commissioners for receiving evidence.

Every such Commissioner shall, in addition to any power of summoning and examining witnesses and requiring the production or delivery of documents and certifying or punishing defaults by witnesses, which he might lawfully exercise as a Judge of a District Court, have, in the matter so referred to him, all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses, as the Court which made the order for winding-up the Company has; and the examination so taken shall be returned or reported to such last-mentioned Court in such manner as it directs.

Cf. sec. 126 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 143 of the Indian Companies' Act X. of 1866, *verbatim*.

In the English Companies' Act here follows sec. 127, under which the examination of persons in Scotland may be ordered.

172. If any affidavit, affirmation or declaration, required to be sworn or made under the provisions or for the purposes of this Part of this Act, be lawfully sworn or made in British India, or in Great Britain or Ireland, or in any colony, island, plantation or place under the dominion of Her Majesty in

Affidavits, &c., may be sworn in British India, Great Britain or Ireland, or abroad,

before any
competent
Court or
person.

foreign parts, before any Court, Judge or person lawfully authorized to take and receive affidavits, affirmations or declarations, or before any of Her Majesty's Consuls or Vice-Consuls in any foreign parts out of Her Majesty's dominions, all Courts, Judges, Justices, Commissioners and persons acting judicially in British India shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, Consul or Vice-Consul, attached, appended or subscribed to any such affidavit, affirmation or declaration, or to any other document to be used for the purposes of this part of this Act.

Sec. 128 of the English Companies' Act (25 and 26 Vic., c. 89), adding the words "in British India"; and sec. 144 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 57 of the Indian Evidence Act I. of 1872.

Voluntary Winding-up of Company.

Circum-
stances under
which Com-
pany may be
wound-up
voluntarily.

173. A Company under this Act(i) may be wound-up voluntarily—

(a) whenever the period, if any, fixed for the duration of the Company by the articles of association expires, or whenever the event, if any, occurs upon the occurrence of which it is provided by the articles of association that the Company is to be dissolved, and the Company in general meeting has passed a resolution requiring the Company to be wound-up voluntarily ;

(b) whenever the Company has passed a special resolution(ii) requiring the Company to be wound-up voluntarily ;

(c) whenever the Company has passed an extraordinary resolution to the effect that it has been proved to its satisfaction that the Company cannot by reason of its liabilities continue its business, and that it is advisable to wind-up the same :

For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution as hereinbefore defined.

Sec. 129 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 145 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) But not an "unregistered Company," sec. 243 (2) *post*.

(ii) Sec. 77 *supra*, p. 71, and note thereto, and as to advertisement of notice of a special or extraordinary resolution to wind-up voluntarily, see sec. 176, *post*; and the special resolution must be registered, sec. 79, *supra*, p. 73.

To Companies formed and registered under Act XIX. of 1857 and VII. of 1860, this Act is by sec. 221, *post*, to apply as if they had been formed and registered under this Act. Such Companies therefore, are under no necessity of re-registering under the power given in sec. 224, *post*, and are not included under the designation of unregistered companies in sec. 243, *post*. Such Companies are, therefore, free from the prohibition contained in sec. 243 (2) *post*, and may be wound-up voluntarily. See Buckley, 4th ed., 285.

Allegations of fraud in a petition for winding-up a Company by the Court and the appointment of their own secretary as provisional liquidator will be sufficient to lead the Court compulsorily to wind-up the Company, although resolutions for a voluntary winding-up have been passed. *IN RE British Alliance Assurance Corporation*, 9 Ch. D., 635.

174. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorizing such winding-up(i). When the winding-up is in pursuance of a special resolution, it shall be deemed to commence at the time of the passing under section seventy-seven, of the confirmatory resolution(ii).

Commence-
ment of
voluntary
winding-up.

The first sentence of this section corresponds with sec. 130 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 146 of the Indian Companies' Act X. of 1866, *verbatim*.

The second sentence embodies the decision in *Daves' case*, L. R. 6 Eq. 232; *Weston's case*, L. R. 4 Ch. 20; *Hornby's case*, 10 W. R., 1164; 19 L. T., 237.

Cf. sec. 63 of Act XIX. of 1857.

(i) See sec. 133, *supra*, as to commencement of winding-up by the Court.

(ii) See sec. 77, *supra*, p. 71.

"When a voluntary winding-up is continued under supervision, the winding-up is deemed to commence at the date of the resolution, and not at the date of the presentation of the petition, for the order is to continue the winding-up, and the commencement of such winding-up is defined by this section." Buckley, 3rd ed., 255, 4th ed., p. 285.

Commencement
of winding-up
under super-
vision.

Where, on the 24th December 1874, a general meeting of shareholders was held at which resolutions were passed for a voluntary winding-up of the Company, and the transfer of its business to a new Company, which were confirmed by a meeting on the 15th January 1875; and in March 1877 a petition was presented for the compulsory winding-up of the old Company, upon which an order was made on the 17th of the same month, *Lindley and Fry, L. J.J.* were of opinion that the winding-up was to be treated as having commenced at the presentation of the petition,

Winding-up
followed by
Compulsory
winding-up.

while *Cotton, L. J.* was of opinion that it commenced from the date of the resolution for voluntary winding-up. IN RE *Taurine Co.*, 25 Ch. Div., 118.

When a provisional liquidator had been appointed before the passing of the resolution to wind-up voluntarily, *Jessel, M.R.*, held the date of the appointment to be the commencement of the winding-up, because it was then that the Company ceased to carry on its business. IN RE *Colonial Trusts Corporation ex parte Bradshaw*, 15 Ch. D., 465.

A voluntary liquidation commences from the date of the resolution, whether a liquidator is appointed or not. *Thomas v. Putent Lionite Co.*, 17 Ch. Div., 250, 257.

As to the effect upon the powers of shareholders to transfer their shares, of issuing a circular calling a meeting of shareholders with a view to the necessary resolution for a voluntary winding-up, see per *Lord Selborne* in *Alexander Mitchell's case*, 4 Ap. Ca., 548, 578.

Effect of
voluntary
winding-up
on status of
Company.

176. Whenever a Company is wound-up voluntarily, the Company shall, from the date of the commencement of such winding-up(i), cease to carry on its business except in so far as may be required for the beneficial winding-up thereof(ii); and all transfers of shares, except transfers made to(iii) or with the sanction of the liquidators, or alteration in the status of the members of the Company, taking place after the commencement of such winding-up, shall be void(iv); but its corporate state and all its corporate powers shall, notwithstanding that its regulations otherwise provide, continue until the affairs of the Company are wound up(v).

Sec. 131 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 147 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 95 of Act XIX. of 1857.

(i) See sec. 174, *supra*.

(ii) Cf. sec. 144, *supra*.

(iii) see *Vining's Case*, L. R. 6 Ch. 96.

(iv) Cf. sec. 197, *infra*.

(v) Cf. sec. 159, *supra*, and see secs. 186 and 187, *infra*.

"Except in so far as may be required for the beneficial winding-up thereof." See *British Wagon Co. v. Lea*, 5 Q. B. D., 149, cited *supra*.

"After the Company is wound up, it ceases to exist, and rescission," [i.e. by a shareholder of his contract] "becomes impossible. There are only creditors and co-contributories and no Company." per *Jessel, M.R.* in *Burgess' case*, 15 Ch. D., at p. 509, see also *Tennent v. City of Glasgow Bank*, 4 Ap. Ca., 618, and *Houldsworth v. City of Glasgow Bank*, 5 Ap. Ca., 317.

Directors who *bonâ fide* refused to register transfers during the interval between the stoppage of the bank and the holding of a special general meeting of shareholders for the purpose of having the bank wound-up voluntarily were held to have acted rightly in so doing. See *Alexander Mitchell's case*, and *Rutherford's case*, 4 Ap. Ca., 548, 580.

176. Notice of any special resolution or extraordinary resolution passed for winding-up a Company voluntarily shall be given by advertisement in the local official Gazette, and also in some newspaper (if any) circulating in the place where the registered office of the Company is situate.

Notice of
resolution to
wind-up
voluntary.

Cf. sec. 132 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 148 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 94 of Act XIX. of 1857.

177. The following consequences shall ensue upon the voluntary winding-up of a Company :—

Consequence
of voluntary
winding-up.

(a) the assets of the Company shall be applied in satisfaction of its liabilities *pari passu*(i) as they exist at the commencement of the winding-up(ii), and subject thereto shall, unless the regulations of the Company otherwise provide, be distributed amongst the members according to their rights and interests in the Company(iii);

(b) liquidators shall be appointed for the purpose of winding-up the affairs of the Company and distributing the assets(iv):

(c) the Company in general meeting shall appoint such persons as it thinks fit to be liquidators and may fix the remuneration to be paid to them (v);

(d) if one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him:

(e) upon the appointment of liquidators, all the powers of the directors shall cease, except in so far as the Company in general meeting, or the liquidators, may sanction the continuance of such powers;

(f) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two:

(g) the liquidators may, without the sanction of the Court exercise all powers by this Act given to the official liquidators(vi):

(h) the liquidators may exercise the powers hereinbefore given(vii) to the Court of settling the list of

contributories of the Company, and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories :

(i) the liquidators may, at any time after the passing of the resolution for winding-up the Company, and before they have ascertained the sufficiency of the assets of the Company, call on all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, to pay all or any sums they deem necessary to satisfy the debts and liabilities of the Company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves; and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same^(viii) :

(j) the liquidators shall pay the debts of the Company, and adjust the rights of the contributories amongst themselves^(ix).

Sec. 133 of the English Companies' Act (25 and 26 Vic., c. 89), 1862 ; and sec. 149 of the Indian Companies' Act X. of 1866, *verbatim*, save that in clause (a) the words "as they exist at the commencement of the winding-up" are new ; in clause (b) the word "assets" is substituted for "property" ; in clause (c) the words "such persons" are substituted for "persons or person" in those secs. respectively ; and in clause (g) "official liquidators" are substituted for "official liquidator" in cl. 7 of the section in the English Act.

Cf. sec. 95 of Act XIX. of 1857.

(i) sec. 201, *post*, as to payment in full.

(ii) As to these words see sec. 147, *supra*, and note thereto.

(iii) Cf. secs. 61, 143, 147, 157, *supra*.

(iv) Cf. sec. 141, *supra*.

(v) Cf. secs. 141, 142, *supra* ; and secs. 179, 184, 185, *post*.

(vi) secs. 144, 146, *supra*, and see secs. 182, 183, 195, 201, 202, 203, *post*.

(vii) sec. 147, *supra*.

(viii) Cf. sec. 151, *supra*.

(ix) As to debts, rules 20,—28, *post* ; set-off, sec. 150, *supra* ; payments from contributories and their application, sec. 61, *supra* ; distribution of surplus assets, sec. 157, *supra*.

(a) The word "assets" in cl. a is substituted for "property" in the corresponding sections in the English and Indian Companies' Act, which latter word means the same as 'assets' in sec. 38 of the English Act, Buckley, 3rd ed., p. 258, 4th ed., 289 ; and see sec. 61, *supra*, p. 53.

As to the priority of the Crown in England over other creditors in a winding-up, see *IN RE Henley and Co.*, 9 Ch. Div., 469, and *Secretary of State v. Bombay Landing and Shipping Co.*, 5 Bom. H. C. O. C. J. 23; see sec. 212, *post*, and note thereto.

(b) A resolution appointing a liquidator is operative only when there is an effective resolution to wind-up. Where therefore a special resolution to wind-up voluntarily which requires confirmation, has been passed at the first meeting, although it is unobjectionable to pass at the same meeting a resolution appointing a liquidator, the latter resolution by itself can have no effect; and if at the subsequent meeting the latter is rejected it is immaterial that the principal resolution, *i. e.* to wind-up, has been confirmed—nor is it possible to fall back upon the resolution appointing a liquidator which was passed at the first meeting and treat it as binding. *IN RE Indian Zoedone Co.*, 26 Ch. Div., 70. Where the chairman at a confirmation meeting disallowed certain votes which had been given against the confirmation of a resolution passed at the first meeting appointing a liquidator, the effect of such disallowance being to confirm such resolution, and he made an entry in the minute book that such resolution had been confirmed, the Court in the absence of evidence that the votes were improperly disallowed, declined to question the decision of the chairman. But, having regard to the unsatisfactory state of the evidence, the Court in the interest of all parties by its own order confirmed the appointment of the liquidator, *ibid*.

(c) As to voting for liquidators being by show of hands, the mode of voting at all meetings according to the common law of England, see *IN RE Horbury Bridge Coal, &c. Co.*, 11 Ch. Div., 109.

As to the principles which guide the Court in awarding further remuneration to liquidators see *supra*, note to sec. 142.

Per *Chitty, J.*, *IN RE Oriental Bank Corporation*, there is a distinction under the Companies' Act, 1862, in regard to the powers of the directors as to carrying on business and otherwise between a winding-up by the Court and a voluntary winding-up. The powers of directors did not cease on the presentation of a petition for winding-up by the Court. If it were otherwise the mere presentation of a petition, however ill founded, would *ipso facto* paralyze the business of the Company, and effectually work its ruin. See this case set out in note to sec. 197, *post*.

(f) As to the appointment of liquidators by creditors, see sec. 179, *post*; "as may be determined at the time of their appointment," see Buckley, 4th ed., 289, 290.

(g) See *British Wagon Co. v. Lea*, 5 Q. B. D., 149, cited *supra*.

As to sale of the property of a Company in consideration of shares, &c., in another Company, see sec. 204, *post*, and note thereto.

(h) In a winding-up by the Court the order for payment of a call is, subject to appeal, conclusive evidence that the money is due, see secs. 151, 155, *supra*.

Sec. 166, *supra*, applies to a winding-up by the Court; but in a voluntary winding-up the call can only be enforced by suit, or by proceeding under sec. 182, *post*, in which the contributory would be able to contest his liability. See Buckley, 3rd ed., p. 260, 4th ed., 290.

178. Where a Company limited by guarantee and having a capital divided into shares is being wound-up voluntarily, any share-capital that may not have been called up shall be deemed to be assets of the Company, and to be a debt⁽ⁱ⁾ due from each member to the Company to the extent of any sums that may be unpaid on any shares held by him, and

Effect of winding-up on share-capital of Company limited by guarantee.

payable at such time as may be appointed by the liquidators.

Sec. 134 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, omitting the word "specialty" before "debt"; and sec. 150 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Secs. 125 and 139, *supra*, and notes thereto.

Power of
Company to
delegate
authority to
appoint
liquidators.

179. A Company about to be wound-up voluntarily, or in the course of being wound-up voluntarily, may, by an extraordinary resolution(i), delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them. and supplying any vacancies in the appointment of liquidators, or may, by a like resolution, enter into any arrangement with respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised.

Any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the Company(ii).

Sec. 135 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 151 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Sec. 173, *supra*.

(ii) Sec. 177, *supra* (c)—(e), secs. 184, 185, *post*.

Arrangement
when binding
on creditors.

180. Any arrangement(i) which a Company about to be wound-up voluntarily, or in the course of being wound-up voluntarily, shall have entered into with its creditors shall be binding on the Company if sanctioned by an extraordinary resolution(ii), and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned(iii).

Sec. 136 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 152 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Cf. sec. 201, *post*.

(ii) Sec. 173, *supra*.

(iii) Sec. 181, *post*.

For the distinctions between this section and sec. 201, *post*, see Buckley, 4th ed., 291.

Where there is an honest and fair arrangement it is immaterial in what order the sanctions provided by this section are given, and the Court will not be astute to find technical defects in the proceedings, *IN RE Dynevor Dyffryn &c. Collieries Co.*, 11 Ch. Div., 605.

181. Any creditor or contributory of a Company that has in manner aforesaid(i) entered into any arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary or confirm the same.

Power of creditor or contributory to appeal.

Sec. 137 of the English Companies' Act (25 and Vic., c. 89), 1862; and sec. 153 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Sec. 180, *supra*.

Applications under the above section in Act X. of 1866 must be made by petition, see rule 49, *post*.

182. Where a Company is being wound-up voluntarily, the liquidators or any contributory of the Company may apply to the Court to determine any question arising in the matter of such winding-up, or to exercise, as respects the enforcing of calls or in respect of any other matter, all or any of the powers which the Court might exercise if the Company were being wound-up by the Court. Any such application may be made by motion. The Court, if satisfied that the determination of such question or the required exercise of power will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order or decree on such application as the Court thinks just.

Power for liquidators or contributories in voluntary winding-up to apply to Court.

Sec. 138 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, *mutatis mutandis*, as to the Courts to be applied to; and sec. 154 of the Indian Companies' Act X. of 1866, *verbatim*. The words "any such application may be made by motion" are new, and their effect will be to alter rule 49, *post*, as regards this section.

For the objects and effect of this section, see the note to the sec. in Buckley, 3rd ed., pp. 262, 263; 4th ed., pp. 292, 293.

As to how a *creditor* can acquire the same powers as those conferred on liquidators and contributories under this section, see Buckley, 4th ed., 293.

Upon the application of a contributory under corresponding sec. (138) of the English Act, 1862, persons were summoned for examination under sec. 115 of that Act (corresponding with sec. 162, *supra*) in *IN RE Gold Co.*, 12 Ch. Div., 77, see the case cited *supra*; see also *Hieron's case*, 15 Ch. Div., 139, cited *supra*, where the meaning of the words "just and beneficial" was considered.

"Just and beneficial."

The summons in *IN RE Whitehouse and Co.*, 9 Ch. D., 595 (cited fully *supra*, note to sec. 150) was taken out under this sec. by the liquidator.

Any question fairly arising in the winding-up may be brought before the Court by the liquidators under this section by motion. *IN RE Union Bank of Kingston upon Hull*, 13 Ch. D., 808.

Power of
liquidators to
call general
meeting.

183. Where a Company is being wound up voluntarily, the liquidators may, from time to time, during the continuance of such winding-up, summon general meetings of the Company for the purpose of obtaining the sanction of the Company by special resolution(i) or extraordinary resolution(ii), or for any other purposes they think fit.

In the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the Company at the end of the first year and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up has been conducted, during the preceding year.

Sec. 139 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 155 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Sec. 77 *supra*, p. 71.

(ii) Sec. 173 *supra*.

Power to fill
up vacancy
in office of
liquidators.

184. If any vacancy occurs in the office of liquidators appointed by the Company, by death, resignation or otherwise, the Company in general meeting may, subject to any arrangement they may have entered into with their creditors(i), fill up such vacancy; and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the Company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the Company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the Company, be determined by the Court.

Sec. 140 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 156 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See sec. 179, *supra*.

Power of
Court to
appoint
liquidators.

185. If, from any cause whatever, there is no liquidator acting in the case of a voluntary winding-up, the Court may, on the application of a contributory(i), appoint a liquidator or liquidators. The Court may also, on due cause shown(ii), remove any

liquidator and appoint another liquidator to act in the matter of a voluntary winding-up.

Sec. 141 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 157 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See rule 49, *post*.

(ii) See sec. 142, *supra*.

(iii) Secs. 194, 196, *post*.

"Due cause shown" is not equivalent to "if the Court shall think fit." Some unfitness in the liquidator must be shown in order to justify his removal, and the removing him is not a matter of pure judicial discretion. In *RE Sir John Moore Gold Co.*, 12 Ch. Div., 325; where intimacy existing between the liquidators and two directors against whom proceedings were being instituted, and a refusal on the part of the liquidator to take proceedings against them and a decided expression of his views in favour of their conduct in the matters complained of, were held to constitute "due cause" for his removal. Cf. *ex parte Sheard IN RE Pooley*, 16 Ch. Div., 107; which shows that the removal of a trustee in bankruptcy is governed by similar principles.

In *IN RE The East India Bank* the official liquidators of the Bank were removed by order of the High Court of Bombay, dated 19th June 1880, for personal misconduct in the liquidation, and were ordered to pay two-thirds of the costs of the Petitioner.

186. As soon as the affairs of the Company are fully wound-up, the liquidators shall make up an account showing the manner in which such winding-up has been conducted and the property of the Company disposed of: and thereupon they shall call a general meeting of the Company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators.

Liquidators
on conclusion
of winding-up
to make up
an account.

The meeting shall be called by advertisement, specifying the time, place and object of such meeting, and such advertisement shall be published one month at least previously to the meeting in the manner specified in section one hundred and seventy-six(i).

Sec. 142 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, *mutatis mutandis*, as to publication of the advertisement; and sec. 158 of the Indian Companies' Act, X. of 1866, *verbatim*, save that "sec. 148" is substituted in that Act for "sec. 176."

Cf. sec. 95, clause 10 of Act XIX. of 1857.

(i) *i.e.*, in the local official gazette, and also in some newspaper (if any) circulating in the place where the registered office of the Company is situate, sec. 176, *supra*.

"Fully wound-up," see *IN RE London and Caledonian Marine Insurance Co.*, 11 Ch. Div., 140, per *James, L. J.*, p. 143:—"Take the case of an insolvent Company, insolvent because there were contributories at that time insolvent who had not paid their calls; or suppose there had been judgment against a hundred contributories recovered, and a return made by the sheriff that they had no assets and that he could not levy the

amount of the judgment, could it be said that so long as a thing of that kind continued the Company could not be fully wound-up? or suppose an outstanding liability under a lease, under the covenants in which the Company might be liable any number of years afterwards, could not the Company be fully wound-up? We must put some practical and sensible meaning on the words, *and in my opinion they mean 'as far as the liquidators can wind them up'*; that is, when the liquidator has done all that he can to wind-up the Company, when he has disposed of the assets as far as he can realize them, got in the calls as far as he can enforce them, and paid the debts as far as he is aware of them, and has done all that he can do in winding-up the affairs, so that he has completed his business so far as he can, and is *functus officio*;" and IN *RE Pinto Silver Mining Co.*, 8 Ch. Div., 273, was held to govern the case.

Liquidators
to report
meeting to
Registrar.

187. The liquidators shall make a return to the Registrar of such meeting having been held, and of the date at which the same was held; and, on the expiration of three months from the date of the registration of such return, the Company shall be deemed to be dissolved(i).

If the liquidators make default in making such return to the Registrar, they shall incur a penalty not exceeding fifty rupees for every day during which such default continues.

Sec. 143 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting "fifty rupees" for "five pounds" in that section; and sec. 159 of the Indian Companies' Act X. of 1866.

Cf. sec. 95 of Act XIX. of 1857.

(i) Sec. 159, *supra*, as to dissolution of a Company which has been wound-up by the Court.

To enable the Court to make an order for winding-up a Company which has been dissolved under this and the last preceding section the dissolution must be impeached on the ground of fraud. IN *RE London and Caledonian Marine Insurance Co.*, 11 Ch. Div., 140.

As a general rule a winding-up of a Company under supervision of the Court should be terminated in the same way as a purely voluntary winding-up, *i.e.*, under sections 186 and 187 of this Act. IN *RE The Carwar Co.*, I. L. R. 6 Bom. 640. See this case further cited in note to sec. 195, *post*.

Costs of
voluntary
liquidation.

188. All costs, charges and expenses properly incurred in the voluntary winding-up of a Company, including the remuneration of the liquidators, shall be payable out of the assets of the Company in priority to all other claims(i).

Sec. 144 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 160 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 95, cl. 12 of Act XIX. of 1857.

Cf. sec. 158, *supra*.

(i) "In priority to all other claims," *i.e.*, "in priority to all claims upon the Company when the order to wind-up was made, and no others," per *Malins, V. C.*, IN *RE Home Investment Society*, 14 Ch. D., 170.

This case was considered by *Chitty, J.* IN RE *Dronfield Silkstone Coal Co.* (No. 2) 23 Ch. D., 511, referred to in note to sec. 158, *supra*.

189. The voluntary winding-up of a Company shall not be a bar to the right of any creditor of such Company to have the same wound-up by the Court(i), if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up. Saving of rights of creditors.

Sec. 145 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 161 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 96 of Act XIX. of 1857.

(i) i.e. before dissolution under sec. 187, *supra*, see IN RE *Pinto Silver Mining Co.*, 8 Ch. Div., 273, and IN RE *London and Caledonian Marine Insurance Co.*, 11 Ch. Div., 140, cited *supra*.

As to the circumstances under which a Company may be wound-up by the Court, and the orders which will in different cases be made in a petition for having a Company so wound-up, see secs. 128, 129, and 140, *supra*, and 191, 193, *post*, as to winding-up subject to supervision.

When the Company had resolved to wind-up voluntarily, *Malins, V. C.* held it unnecessary to consider whether the allegations in a petition for a compulsory winding-up stated a *prima facie* case under sec. 21 of the Life Assurance Companies' Act (33 and 34 Vic., c. 61), 1870, the resolution to wind-up voluntarily being an admission of insolvency. IN RE *British Alliance Assurance Corporation*, 9 Ch. D., 635.

As to a shareholder's petitioning for a compulsory winding-up after a resolution for a voluntary winding-up has been passed in IN RE *Gold Co.*, 11 Ch. Div., all the cases cited at pp. 267, 268, of the 3rd ed. of Mr. Buckley's work were referred to and it was held that after a resolution has been passed for winding-up a Company voluntarily a shareholder cannot, as a general rule, obtain an order for winding compulsorily, or an order for continuing the voluntary winding-up under supervision. The only exceptions to the rule are when the resolution has been passed fraudulently, or when creditors appear to support the petition; per *James, L. J.*, p. 710:—"I cannot find anything in this case to satisfy the Court, or to entitle the Court to say that it can deprive these shareholders, for they are persons interested, of the right which belongs ordinarily, and except under very exceptional circumstances, to the shareholders of every joint stock Company or corporation of this kind, of determining amongst themselves, by a majority, according to their view of what is most for their interest, what ought to be done or ought not to be done, either in the disposal of the property of the Company, or in making any claims against any supposed debtors to or persons liable to the Company."

As to the creditor's right to an order under this section (145) in the English Act, see Buckley, 3rd ed., pp. 268, 269; 4th ed., 298, 299, and cases therein cited.

190. Where a Company is in course of being wound-up voluntarily, and proceedings are taken for the purpose of having the same wound-up by the Court(i), the Court may, if it thinks fit, notwithstanding that it makes an order directing the Company to be wound-up by the Court, provide in such order or in any other order for the adoption of all or any of Power of Court to adopt proceedings of voluntary winding-up.

the proceedings taken in the course of the voluntary winding-up.

Sec. 146 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 162 of the Indian Companies' Act X. of 1866.

(i) Secs. 189 and 128, *supra*.

As to the commencement of the winding-up in such a case see sec. 196, *post*.

Winding-up subject to the Supervision of the Court.

Power of Court, on application, to direct winding-up subject to supervision.

191. When a resolution has been passed by a Company to wind-up voluntarily(i), the Court may make an order(ii) directing that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally upon such terms and subject to such conditions, as the Court thinks just.

Sec. 147 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 163 of the Indian Companies Act X. of 1866, *verbatim*.

(i) Sec. 173, *supra*.

(ii) See rules 6, 7, and Form No. 4, *post*.

By sec. 193 *post*, the Court is to have regard to the wishes of the creditors and contributories of the Company, but by this section it is left absolutely in the discretion of the Court whether an order shall be made or not under this section. Buckley, 3rd ed., p. 270; 4th ed., p. 301.

The order will not be made upon a shareholder's petition unless the resolution to wind-up voluntarily has been passed fraudulently, or creditors appear to support the petition, *IN RE Gold Co.*, 11 Ch. Div., 701, cited *supra*.

So far as the Court does not interfere, a winding-up under supervision remains essentially a voluntary winding-up; but the Court in a winding-up under supervision has full authority to interfere and to exercise to any extent the power which it might have exercised if an order had been made for winding-up the Company by the Court. *IN RE Carwar Co.*, 1 L. R. 6 Bom., 640. See also per *Lindley, L. J.*, *IN RE Taurine Co.*, 25 Ch. Div., p. 138.

A supervision order is an order to continue the voluntary winding-up. The winding-up under supervision is, therefore, deemed to commence at the commencement of the voluntary winding-up, see sec. 174, *supra*. Buckley, 3rd ed., p. 271, 4th ed., p. 302.

Petition for winding-up subject to supervision.

192. A petition praying wholly or in part that a voluntary winding-up shall continue, but subject to the supervision of the Court, and which winding-up is hereinafter referred to as a winding-up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding-up the Company by the Court(i).

Sec. 118 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, which adds "and actions" after "suits"; and sec. 164 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Sections 134, 136, *supra*; as to the petition see rules 1—5, *post*.

193. The Court may, in determining whether a Company is to be wound-up altogether by the Court, or subject to the supervision of the Court, in the appointment of a liquidator or of liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings(i) of the creditors or contributories to be summoned, held and regulated in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

Court may have regard to wishes of creditors [or contributories.]

In the case of creditors, regard shall be had to the value of the debts due to each creditor, and, in the case of contributories, to the number of votes conferred on each contributory by the regulations of the Company(ii).

Sec. 149 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 165 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See rules 43—45, *post*.

(ii) Cf. sec. 140, and note thereto, *supra*; and see sec. 191, *supra*.

See the cases collected in note to this section in the English Act, Buckley, 3rd ed., pp. 272, 273; 4th ed., 303, 304.

The shareholders' petition was refused in *IN RE Gold Co.*, 11 Ch. Div., 701, the resolution to wind-up voluntarily not having been passed fraudulently, and no creditors appearing to support, see per *Baggallay, L. J.*, at p. 718; see this case *supra*.

194. Where any order is made by the Court for a winding-up subject to the supervision of the Court(i), the Court may, in such order or in any subsequent order, appoint any additional liquidator.

Power to Court to appoint additional liquidator in winding-up subject to supervision.

Any liquidator so appointed by the Court shall have the same powers, be subject to the same obligations and in all respects stand in the same position, as if he had been appointed by the Company(ii).

The Court may, from time to time, remove any liquidator so appointed by the Court, and fill up

any vacancy occasioned by such removal, or by death or resignation(iii).

Sec. 150 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, which adds "or liquidators" after "additional liquidator," and substitutes "liquidators" for "liquidator" in this section ; and section 166 of the Indian Companies' Act X. of 1866, which corresponds *verbatim* with the section in the English Act.

(i) Sec. 191, *supra*.

(ii) Sec. 177, *supra*.

(iii) Cf. secs. 185, *supra*, and 196, *post*, and see rule 16, *post*.

The removal of liquidators appointed by the Court or the Company in a voluntary winding-up is provided for by sec. 185, *supra*.

As to the appointment of two creditors as liquidators in the place of the official liquidator who had been appointed in chambers, see *IN RE Association of Land Financiers*, 9 Ch. D., 269, cited in note to sec. 140, *supra*.

As to removal of the liquidator "on due cause shown" see *IN RE Sir John Moore Gold Mining Co.*, 12 Ch. Div., 325, cited in the note to sec. 185, *supra*.

Effect of
order of
Court for
winding-up
subject to
supervision.

195. Where an order is made for a winding-up subject to the supervision of the Court(i), the liquidator appointed to conduct such winding-up may, subject to any restrictions(ii) imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the Company were being wound up altogether voluntarily(iii).

Save as aforesaid, any order made by the Court for a winding-up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceedings(iv), be deemed to be an order of the Court for winding-up the Company by the Court, and shall confer full authority on the Court to make calls(v), or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding-up the Company altogether by the Court.

In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding-up subject to the supervision of the Court.

Sec. 151 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 167 of the Indian Companies' Act X. of 1866, *verbatim*, save that "liquidator" and "his powers" are substituted for "liquidators" and "their powers" in the first paragraph of this section.

- (i) Sec. 191, *supra*.
- (ii) Cf. sec. 145, *supra*.
- (iii) Sec. 177, *supra*.
- (iv) Sec. 136, *supra*, and sec. 212, *post*.
- (v) Sec. 151, *supra*.

Although, under this section, the Court has power to make an order dissolving a Company in the course of winding-up subject to its supervision, such cases must be exceptional, and can only occur when the Court has deemed it proper to carry on the winding-up under supervision in a manner such as clearly to approximate to a winding-up by the Court. The ordinary rule is the other way, and it is reasonable that it should be so; as, generally, a winding-up under supervision is not conducted under so intimate a control of the Court as to put the Court in a position to judge of the correctness of the liquidators' action and the completeness of the winding-up.

So far as the Court does not interfere, a winding-up under supervision remains essentially a voluntary winding-up; but the Court in a winding-up under supervision has full authority to interfere and to exercise to any extent the power which it might have exercised if an order had been made for winding-up the Company by the Court. *IN RE Corwar Co.* L. L. R. 6 Bom. 640 (*Latham, J.*), and see notes to sec. 160, 186, 187, *supra*.

196. Where an order has been made for the winding-up of a Company subject to the supervision of the Court(i), and such order is afterwards superseded by an order directing the Company to be wound-up compulsorily(ii), the Court may, in such last-mentioned order or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally(iii) or permanently, and either with or without the addition of any other person, to be official liquidators.

Sec. 152 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 168 of the Indian Companies' Act X. of 1866, *verbatim*.

- (i) Sec. 191, *supra*.
- (ii) Sec. 128, *supra*.
- (iii) Secs. 134 and 141, *supra*.

"When a supervision order is superseded by a compulsory order, the winding-up will date from the commencement of the winding-up under supervision, *i.e.* from the resolution to wind-up voluntarily, not from the presentation of the petition," Buckley, 3rd ed., 275; 4th ed., 367.

Cf. note to sec. 191, *supra*.

Supplemental Provisions.

Dispositions
after the
commence-
ment of the
winding up
avoided.

197. Where any Company is being wound-up by the Court or subject to the supervision of the Court, all dispositions of the property of the Company, and every transfer of shares or alteration in the status of the members of the Company, made between the commencement of the winding-up⁽ⁱ⁾ and the order for winding-up, shall, unless the Court otherwise orders, be void.⁽ⁱⁱ⁾

Sec. 153 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, which contains the words "effects and things in action" (as to which see *supra*, note to sec. 144, cl. c) after "property"; and sec. 169 of the Indian Companies' Act X. of 1866, which corresponds *verbatim* with the section in the English Act.

(i) Secs. 133, 174, *supra*.

(ii) Cf. secs. 175, 212, 213.

See and consider *Alex. Mitchell's case*, 4 Ap. Ca., 548, 550; *Rutherford's case*, *ibid.* 540, 581; *Buchan's case*, *ibid.* 549, 583; *Ker's case*, *ibid.* 549, 598, and *Nelson Mitchell v. City of Glasgow Bank*, 4 Ap. Ca. 625; where the date of the stoppage of the Company and the issue of a notice of a meeting to pass voluntary resolutions was fixed as the period of time after which the shareholders were debarred from transferring their shares and escaping liability.

The Oriental Bank Corporation, the domicile and head office of which were in London, stopped payment in London on the 3rd May 1884, on which day a petition to wind-up was presented, and a provisional liquidator appointed, whose powers were limited to taking possession of and protecting the assets of the bank; no power being conferred on him to carry on the business. On the 6th May the petition was duly advertised in the *London Gazette*, and on the 15th the order to wind-up was made. There being no telegraphic communication between England and the Mauritius and the matter being urgent, leave was given by the Court to the provisional liquidator to send an officer of the bank from Durban to the Mauritius by special steamer, to convey to the officers of the bank there information of the presentation of the petition in London, and of the appointment of the liquidator. The utmost despatch was used, and the information reached the bank at Mauritius on the 14th May. Up to that date the officers of the bank and other persons in Mauritius were necessarily ignorant of the stoppage of the bank in London, the presentation of the petition, the advertisement in the *Gazette*, and the appointment of the liquidator, and the business of the branch bank was carried on as usual, and large sums of money were paid in and out in the ordinary course of business and in good faith; the payments out being in excess of the payments in.

A summons was originally taken out by the holders of two bills of exchange dated the 8th and 10th May 1884, one for £200 and the other for £150, drawn by the branch bank at Mauritius on the head office in London; and was afterwards amended by adding as applicants the persons by whom the consideration of the bills was paid into the bank at Mauritius at the date of the bills; it asked for payment of the sums paid in, and for a declaration of the rights of the applicants respectively as against the bank and its estate in liquidation, and in particular for a decision whether they were entitled to immediate payment in full or to prove for the amount.

Chitty, J., in delivering judgment, observed that the most important sections in the Companies' Act 1862, bearing on the question were sections 84 and 153; [corresponding with sections 133 and 197 of the Indian Act]. The 84th section enacted that a winding-up by the Court should be deemed to commence at the time of the presentation of the petition, but the section did not state what consequences were to follow from this enactment. The language of the section being precise, he could not hold that as to the transactions in the Mauritius the winding-up ought to be deemed to commence from the 14th of May. Sec. 153 [sec. 197 of the Indian Act] dealt only with dispositions of property, and did not mention contracts, and the case before the Court was one not of disposition of property but of contract only. The authority of the officers of the bank to carry on the business in Mauritius was not revoked until notice of the appointment of the provisional liquidator reached the island, i.e. the 14th May; and it would be wrong by a fiction of law to impute notice to the persons on the island at a time when it was impossible for them to have had notice. The purchasers of the bills got what they bargained for, viz. drafts of the bank, the payment of which depended on the solvency of the bank at the time of their presentation at the head office; and the principle of *caveat emptor* would seem to apply to their case. The rule upon which the Court exercised the discretion entrusted to it by the 153rd section of the Act was to affirm all transactions *bonâ fide* entered into without notice of the petition, and which were also complete at the date of the winding-up order. His Lordship accordingly held that the bills given by the officers of the bank on behalf of the bank were binding on the bank, and the applicants were not entitled to an order for refunding the consideration paid, but merely to a right of proof; and that the holders of the bills were the persons entitled to prove.

The case being a test case, the costs of all parties were directed to come out of the assets in liquidation. *IN RE Oriental Bank Corporation* (not yet reported).

See the note to this sec. at pp. 275—278 of Buckley, 3rd ed., and 4th ed. 307—310.

198. Where any Company is being wound-up, all books, accounts and documents of the Company and of the liquidators shall, as between the contributories of the Company, be *primâ facie* evidence of the truth of all matters purporting to be therein recorded.

The books of the Company to be evidence.

Sec. 154 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 170 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 78 of Act XIX. of 1857.

See *Fbr's case*, 3 D. J. and S., 465; decided under s. 40 of the Joint Stock Companies' Act, 1856.

See also per *Hall, V. C.*, *IN RE Esparto Trading Co.*, 12 Ch. D., at p. 204.

199. Where any Company has been wound-up under this Act and is about to be dissolved(i), the books, accounts and documents of the Company and of the liquidator may be disposed of in the following way; that is to say, where the Company has been wound-up by or subject to the supervision of the Court, in such way as the Court directs, and where

As to disposal of books, accounts and documents of the Company.

the Company has been wound-up voluntarily, in such way as the Company by an extraordinary⁽ⁱⁱ⁾ resolution directs.

But, after the lapse of five years from the date of such dissolution, no responsibility shall rest on the Company or the liquidators, or any one to whom the custody of such books, accounts and documents has been committed, by reason that the same or any of them cannot be made forthcoming to any party or parties claiming to be interested therein.

Sec. 155 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 171 of the Indian Companies' Act X. of 1866, *verbatim*, save that "liquidator" in the first sentence is substituted for "liquidators" in these sections.

(i) Secs. 159 and 187, *supra*.

(ii) See 173, *supra*.

Inspection of
books.

200. Where an order has been made for winding-up a Company by the Court or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the Company of its books and papers as the Court thinks just, and any books and papers in the possession of the Company may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise⁽ⁱ⁾.

Sec. 156 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 172 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) As to the accounts to be kept by the directors of a Company, see sch. I. table A, cl. 78, *post*; and see rule 54, *post*, as to inspection of books and accounts relating to the winding-up by creditors and contributories.

"Independently of this section, *semble*, a creditor's right to inspection rests upon principles similar to those which would be applicable in a suit if he had filed a bill to establish his claim." Buckley, 3rd ed., p. 279, 4th ed., 311, citing *ex parte Walker*, 15 Jur., 853.

See secs. 129 *et seqq.* of the Civil Procedure Code XIV. of 1882.

In the English Companies' Act (25 and 26 Vic., c. 89), there follow these sections: sec. 157: "Any person to whom anything in action belonging to the Company is assigned in pursuance of this Act, may bring or defend any action or suit relating to such thing in action in his own name." As to which see now sec. 25, cl. 6, of the Judicature Act (36 and 37 Vic., c. 66), 1873.

And sec. 158, "In the event of any Company being wound-up under this Act, all debts payable on a contingency, and all claims against the Company, present or future, certain or contingent, ascertained or sounding only in damages shall be admissible to proof against the Company, a just estimate being made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value."

See Mr. Buckley's note to this section, 3rd ed., pp. 281,—311. 4th ed., 312—345. In India, however, a section corresponding to sec. 157 would be useless, there being no such distinctions between law and equity as existed in England prior to the Judicature Act, 1873. See the Act for establishing High Courts of Judicature in India (24 and 25 Vic., c. 104), 1861; and the Letters Patent of 1862, clauses 18, 19 and 20; and 1865, clauses 19, 20, and 21 granted under that Act.

Section 158 seems to have been omitted from the Indian Companies' Acts as unnecessary, having regard to Rules 20 to 28, *post*, and see the note thereto.

No rules have as yet been made under the present Act but by section 2, *supra*, the rules at present in existence which were made under Act X. of 1866 are to be deemed to have been made under this Act. See the rules, *post*.

201. The liquidator may, with the sanction of the Court(i) where the Company is being wound-up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution(ii) of the Company where the Company is being wound-up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidator may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, whereby the Company may be rendered liable.

General
scheme of
liquidation
may be
sanctioned.

Sec. 159 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 173 of the Indian Companies' Act X. of 1866, substituting "liquidator" for "liquidators" in these sections. In the sec. in the English Act the words "present or future" are followed by "certain or contingent, ascertained or sounding only in damages against the Company, or whereby." &c.

(i) See rule 48, *post*.

(ii) See secs. 173, 183, *supra*.

(iii) Cf. sec. 180, *supra*.

See note to the following section.

202. The liquidator may, with the sanction of the Court(i) where the Company is being wound-up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution(ii) of the Company where the Company is being wound-up altogether voluntarily, compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, whether present or future, subsisting or supposed to subsist between the Company and any contributory or alleged contributory, or other debtor or person apprehending liability

Power to
compromise.

to the Company, and all questions in any way relating to or affecting the assets of the Company or the winding-up of the Company, generally upon such terms as may be agreed upon, with power for the liquidator to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts or liabilities.

Sec. 160 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, in which after the words "present or future" are added "certain or contingent, ascertained or sounding only in damages," and after the words "or the winding-up of the Company" are added "upon receipt of such sums, payable at such times and generally upon such terms," &c.; and sec. 174 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See rules 47, 56, 57, 58, *post*.

(ii) See secs. 173, 183, *supra*.

"A going Company has, as an incident to its existence, the same power of compromising claims against it as an individual has. This and the preceding section appear to provide that a Company in liquidation by its official liquidators, with the sanction of the Court, shall have exactly the same power of compromising both with its creditors and its debtors as an individual would have." Buckley, 4th ed., 317.

The words of the section and especially the words "liabilities to calls, debts, and liabilities capable of resulting in debts, subsisting or supposed to subsist," and the words "alleged contributory," plainly show that the compromises intended to be sanctioned might be entered into *before the list of contributories had been settled, or the liabilities or competence of the shareholders had been ascertained*. *Bank of Hindustan, &c. v. Eastern Financial Association*. 1. R. 2 P. C. 489, 501; 13 Moore I. A. 15; 3 Beng. L. R. P. C. 8; 12 W. R. P. C. 27; 6 Moore P. C. C. N. S. 114; where it was held further that upon the evidence and the judicial knowledge of the existing state of affairs of the *Eastern Financial Association* in Bombay, the High Court in Bombay had exercised a just discretion in the investigation and the order sanctioning the compromise was affirmed. See also *IN RE Commercial Bank Corporation of India and the East*, L. R. 8 Eq., 241.

If a scheme of arrangement under the *English Companies' Act*, 1862, and the *Joint Stock Companies' Arrangement Act*, 1870, has received the sanction of the majorities of contributories and creditors required by the Acts, and also the sanction of the Court, it is not material in what order those sanctions have been obtained. And when the arrangement is a fair one, and is likely to be beneficial to all parties, the Court will not be astute to find technical defects in the proceedings. *IN RE Dynevor Dyffryn and Neath Abbey Collieries Co.*, 11 Ch. Div., 605. See further *IN RE Tunis Railway Co.*, 10 Ch. D., 270, n, where the Court sanctioned, and *IN RE Richards and Co.*, 11 Ch. D., 676, where the Court declined to sanction, a scheme of arrangement.

Where
compromise
proposed,
Court may
order a

203. Where any compromise or arrangement shall be proposed between a Company which is, at the commencement of this Act or afterwards, in the course of being wound-up either voluntarily or by

or under the supervision of the Court, and the creditors of such Company, or any class of such creditors, it shall be lawful for the Court, in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct; and, if a majority in number, representing three-fourths in value, of such creditors or class of creditors present either in person or by proxy at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said Company.

meeting of
creditors
&c., to decide
as to such
compromise.

Sec. 2 of the Joint Stock Companies' Arrangement Act (33 and 34 Vic., c. 104), 1870, *verbatim*, omitting the reference to the English Companies' Acts of 1862 and 1867 in that section.

For the difficulties which this section was aimed at see Buckley, 4th ed., 348, 515, *et seqq.*

204. Where any Company is proposed to be, or is in the course of being, wound-up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another Company, the liquidators of the first-mentioned Company may, with the sanction of a special resolution(i) of the Company by whom they were appointed, conferring either a general authority on the liquidators or an authority in respect of any particular arrangement, receive, in compensation or part compensation for such transfer or sale, shares, debentures, policies or other like interests in such other Company, for the purpose of distribution amongst the members of the Company being wound-up, or may enter into any other arrangement whereby the members of the Company being wound-up may, in lieu of receiving cash, shares, debentures, policies or other like interests, or in addition thereto, participate in the profits of, or receive any other benefit from, the purchasing Company.

Power for
liquidators
to accept
shares, &c.,
as a consideration for sale
of property of
Company.

Any sale made, or arrangement entered into, by the liquidator in pursuance of this section shall be

binding on the members of the Company being wound-up; subject to this proviso that, if any member of the Company being wound-up, who has not voted in favour of the special resolution passed by the Company of which he is a member at either of the meetings held for passing the same, expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the Company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may, [by writing addressed and left as last aforesaid,] require the liquidator to do one of the following things as the liquidator may prefer (that is to say):—either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned; such purchase-money to be paid before the Company is dissolved and to be raised by the liquidator in such manner as may be determined by special resolution.

No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to, or concurrently with, any resolution for winding-up the Company or for appointing liquidators; but if an order be made within a year for winding-up the Company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court.

Sec. 161 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, *verbatim*, save that in the present section the word "debentures" is inserted between "shares" and "policies"; and sec. 175 of the Indian Companies' Act X. of 1866, *verbatim*; the portion in brackets is new, as to which see *IN RE Union Bank of Kings: n-upon-Hull, infra*.

(i) Sec. 77, *supra*, p. 71.

(ii) Sec. 205, *infra*.

This section relates not to a purely voluntary winding-up only, but extends to a winding-up under the supervision of the Court. Where the matter is before the Court a sale of the property of the Company can be made under sec. 144, *supra*, and to such a sale the principles embodied in the present section are applicable, for it cannot be intended that when the matter is before the Court, the Court shall have less power than the liquidators have in a voluntary winding-up. See Buckley, 4th ed., 350.

For the considerations which will influence the Court in granting or refusing its sanction to resolutions for the transfer of assets from an old to a new Company, see *IN RE The Fleming Spinning and Weaving Co.*, 1 L. R. 3 Bom., 299, 306.

After the expiration of a year, an agreement under the 161st section of the English Act, entered into by a Company about to be wound-up voluntarily for the sale and transfer of its business to another Company, is binding upon the creditors of the transferring Company—their remedy if they cannot get payment of their debts is to obtain a winding-up order before the expiration of a year.

It is no objection to such an agreement that it contains a stipulation that the purchasing Company shall take a portion only of the assets and liabilities of the transferring Company, leaving the rest of the debts to be paid by the liquidator of the transferring Company; or that it contains a stipulation that the shares in the purchasing Company, which are to be given as a consideration for the transfer shall be distributed directly among the shareholders of the transferring Company, and not given to the liquidator as part of the assets in the winding-up. *IN RE City and Country Investment Co.*, 13 Ch. Div., 475.

The requisition under the above section by any dissentient shareholder of the transferring Company to the liquidators thereof either to abstain from carrying a resolution for effecting the transfer under the section into effect, or to purchase his interest must be contained in the notice of dissent, which the section requires to be in writing, and left not later than seven days after the date of the meeting at which the special resolution was passed. *IN RE Union Bank of Kingston-upon-Hull*, 13 Ch. D., 803.

Form of notice
of dissent.

In *IN RE The Fleming Spinning and Weaving Co.*, 1 L. R. 3 Bom., 299, two shareholders *J.* and *H.* of the transferring Company, the holders of 50 and 20 shares respectively, dissented from the special resolutions for winding-up the Company voluntarily and transferring its assets to a new Company to be formed in the manner required by sec. 175 of Act X. of 1866, and required the liquidators to purchase their interests. The matter was thereupon referred to arbitration.

In the case of *H.* an award was made and filed, but further proceedings were stayed by the order of the Court. In the case of *J.* no award was made, and he brought a suit which was still pending against the old and the new Company and the liquidators to recover the value of his shares. In pursuance of the resolutions, the liquidators of the old Company handed over the assets to the new Company; and no property remained in the hands of the old Company except the shares remaining to be distributed among the dissentient shareholders. Upon the winding-up of the new Company, the official liquidators presented a petition praying that the special resolutions might be sanctioned by the Court. The two dissentient shareholders *H.* and *J.* objected to the sanction being given, unless provision was made for the satisfaction of their claims as soon as they could be ascertained. It was *held (inter alia)* that by virtue of sec. 175 of Act X. of 1866, it was a condition of the resolution being binding on the dissentient shareholders *H.* and *J.* that they should be paid the value of their interest in the business and property intended to be transferred. That under the special circumstances of the case, the new Company having taken the property and assumed all the liabilities of the old Company, which would include the liability to purchase the interests of dissenting shareholders, there being no laches on the part of either of them, *H.* or *J.* respectively, and the property being within the jurisdiction of the Court and under its direct control by virtue of the winding-up order, the Court ought to place the dissenting shareholders with respect to the property of the old Company, in the same position as it would have placed them had they applied, under 154 sec. of Act X. of 1866, for an injunction to restrain the transfer until a fund

was provided to secure the payment of their interests. Accordingly the Court sanctioned the resolutions subject to the value of the interest of *H. and J.* being paid or adequately secured: but without prejudice to any question between the creditors of the *old* Company and *H. and J.* . . .

The rights of a dissentient shareholder under sections 175 to 179 of the Indian Companies' Act X. of 1856 [which correspond with sections 204 to 208 of the present Act] who has elected to have the value of his interest decided by arbitration, are not limited to a single reference to arbitration, and are not extinguished by the expiry, without an award being made, of the time fixed by such reference for making an award. In such a case, unless otherwise disentitled, the dissentient shareholder is entitled to a second reference to arbitration for the purpose of arriving at a definite result by means of an award, which is the object contemplated by these sections, *IN RE Fleming S. and W. Co.* 1. L. R. 7 Bom., 494. But the order in no way affected the rights of creditors, *ibid.* 514.

In that case it was also held (following *IN RE Union Bank of Kingston upon Hull*, 13 Ch. D., 808) that a notice of dissent which did not contain the requisition to the liquidators required by the latter part of section 175 (corresponding to sec. 204) was an insufficient notice, but that the liquidators had power to waive, and had in fact waived, the informality of the notice on behalf of the Company.

For articles of association which provide for a sale or arrangement under this sec. see Palmer's Company Precedents, 3rd ed., pp. 166, 167. For the form of notice to be given by the dissentient shareholder, *ibid.* p. 564; and for a form of an order on a summons as to a dissentient, *ibid.* p. 557.

As to the liability of amalgamating Companies for their respective debts, see Lindley, 3rd ed., 1351.

Mode of
determining
price.

205. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement. If the parties dispute about the same, such dispute shall be settled by arbitration under the provisions next hereinafter contained.

Sec. 162 of the English Companies' Act (25 and 26 Vic., c. 89), is as follows:—"The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute about the same such dispute shall be settled by arbitration, and for the purposes of such arbitration the provisions of 'The Companies' Clauses Consolidation Act, 1845,' with respect to the settlement of disputes by arbitration, shall be incorporated with this Act; and in the construction of such provisions this Act shall be deemed to be the special Act, and 'the Company' shall mean the Company that is being wound-up, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the Directors, may be made under the hand of the liquidator if only one, or any two or more of the liquidators if more than one." The present section corresponds *verbatim* with sec. 176 of the Indian Companies' Act X. of 1866.

See note to sec. 204, *supra*.

If the articles of association provide for arbitration it is not necessary to resort to these provisions; the arbitration should proceed in accord-

ance with the articles. *De Rosaz v. Anglo-Italian Bank*, L. R. 4 Q. B., 462. Buckley, 4th ed. 355; Palmer 3rd ed., 557, 558.

206. When any dispute so directed to be settled by arbitration has arisen, then, unless both parties concur in the appointment of a single arbitrator, each party, on the request of the other party, shall by writing under his hand nominate and appoint an arbitrator to whom such dispute shall be referred.

Appointment of arbitrator when questions are to be determined by arbitration

After any such appointment has been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation.

If for the space of fourteen days after any such dispute has arisen, and after a request in writing has been served by one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters in dispute; and in such case the award or determination of such single arbitrator shall be final.

Sec. 128 of the Companies' Clauses Consolidation Act (8 and 9 Vic., c. 16), 1845; and sec. 177 of the Indian Companies' Act X. of 1866.

207. If, before the matters so referred are determined, any arbitrator appointed by either party die, or become incapable or refuse, or for seven days neglect, to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal or disability as aforesaid.

Vacancy of arbitrator to be supplied.

Sec. 129 of the Companies' Clauses Consolidation Act (8 and 9 Vic., c. 16), 1845; and sec. 178 of the Indian Companies' Act X. of 1866.

Appointment
of umpire.

208. Where more arbitrators than one have been appointed, they shall, before entering upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ.

If such umpire die, or refuse, or for seven days neglect to act, they shall forthwith, after such death, refusal or neglect, appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

Sec. 130 of the Companies' Clauses Consolidation Act (8 and 9 Vic., c. 16), 1845; and sec. 179 of the Indian Companies' Act X. of 1866.

Sec. 131 of the Companies' Clauses Consolidation Act, which empowers the Board of Trade in England to appoint an umpire on the neglect of the arbitrators to do so, in the case of Railway Companies, is here omitted.

Power of
arbitrators to
call for
books, &c.

209. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath.

Sec. 132 of the Companies' Clauses Consolidation Act (8 and 9 Vic., c. 16), 1845; and sec. 180 of the Indian Companies' Act X. of 1866, which concluded, "and administer the oaths necessary for that purpose."

Costs to be
in the
discretion
of the
arbitrators.

210. The costs of and attending every such arbitration to be determined by the arbitrators shall be in the discretion of the arbitrators or their umpire, as the case may be.

Sec. 133 of the Companies' Clauses Consolidation Act (8 and 9 Vic., c. 16), 1845; and sec. 181 of the Indian Companies' Act X. of 1866.

Submission
to arbitration
may be filed
in Court.

211. On the application of either of the parties the submission to any such arbitration may be filed in the Court, and an order of reference may be made thereon; and the provisions of the Code of Civil Procedure shall, so far as the same are applicable, apply to every such order and to all proceedings thereunder.

Sec. 134 of the Companies' Clauses Consolidation Act (8 and 9 Vic., c. 16), 1845, is as follows:—"The submission to any such arbitration may be made a rule of any of the Superior Courts, on the application of either of the parties;" and sec. 182 of the Indian Companies' Act X. of 1866.

The provisions of the Civil Procedure Code relating to arbitration are to be found in the appendix, *post*.

212. Where any Company is being wound-up by the Court or subject to the supervision of the Court, any attachment, distress or execution put in force, without the leave of the Court, against the estate or effects of the Company after the commencement of the winding-up shall be void(i). Certain attachments, distresses and executions to be void.

Nothing in this section applies to proceedings by the Government.

The first clause of this section corresponds, *verbatim*, with sec. 163 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, which, however, adds the words "to all intents" after "shall be void"; and with sec. 183 of the Indian Companies' Act X. of 1866, *verbatim*.

As to the second clause, "Nothing in this section," &c., see Buckley, 3rd ed., 188; 4th ed., 211; *RE Henley and Co.*, 9 Ch. Div., 469; *ex parte Postmaster-General*, *IN RE Barham*, 10 Ch. Div., 595; and *The Secretary of State in Council for India v. The Bombay Landing &c. Co.*, 5 Bom. H. C., R. O. C. J., 28, where it was held that the Crown was not expressly or by implication bound by Act X. of 1866, and as an order under that Act for the winding-up of a Company did not work any alteration of the property, such an order did not enable the Court to stay the execution of a judgment-debt due to the Crown, or to the Secretary of State in Council for India.

See also upon the prerogative of the Crown, *Ganpat Putaya v. Collector of Kanara*, I. L. R. 1 Bom., 7; *Gulyari Lal v. Collector of Bareilly*, I. L. R. 1 All., 596; and *Collector of Moradabad v. Muhammad Daim Khan*, I. L. R. 2 All., 196.

Cf. sec. 77 of Act XIX. of 1857.

(i) Cf. secs. 134, 136, 197, *supra*; and secs. 241, 242, 245, and 246, *infra*.

As to the effect of this section and sections 134 and 136 see notes to these sections *supra*. Query, as to the effects of the omission in the section in the Indian Act of the words "to all intents" see *IN RE Artistic Colour Printing Co.*, *ex parte Fourdrinier*, 21 Ch. Div., 510, where it was held that where an execution against the goods of a Company which is being wound-up is avoided by the Companies' Act 1862, sec. 163, it is avoided altogether, and the creditor retains no interest under it, see the judgment of *Brett, L. J.*, at p. 512. Compare *ex parte Blaisberg* *IN RE Toomer*, 23 Ch. Div., 254.

As to the right of a landlord (a stranger to the Company) to avail himself of a distress put in after the commencement of a winding-up see *IN RE Carriage Co-operative Supply Association*, *ex parte Clemence*, 28 Ch. D., 154. See Buckley, 4th ed., 466.

213. Every conveyance, mortgage, delivery of goods, payment, execution, or other act, relating to property, which would, if made or done by or against any individual trader, be deemed, in the event of his Fraudulent preference.

insolvency, to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any Company, be deemed, in the event of such Company being wound-up under this Act, to have been made or done by way of undue or fraudulent preference of the creditors of such Company, and shall be invalid accordingly.

For the purposes of this section, the making of an application for winding-up a Company shall, in the case of a Company being wound-up by the Court or subject to the supervision of the Court, and a resolution for winding-up the Company shall, in the case of a voluntary winding-up, be deemed to correspond with the act of insolvency in the case of an individual trader; and any conveyance or assignment made by any Company formed under this Act, of all its estate and effects to trustees, for the benefit of all its creditors, shall be void.

Sec. 164 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting "insolvency" for "bankruptcy," and "the making of an application" for "presentation of a petition," in that section, and omitting "to all intents" after the words "shall be void"; and sec. 185 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 74 of Act XIX. of 1857.

As to the law relating to fraudulent preference in India see the Indian Insolvent Act, 11 and 12 Vic., c. 21, sec. 24, and in England the Bankruptcy Act (32 and 33 Vic., c. 71), 1869, sec. 92; and the Bankruptcy Act (46 and 47 Vic., c. 52), 1883, sec. 28 (f); and sec. 43.

Power of
Court to
assess
damages
against
delinquent
directors and
officers.

214. Where, in the course of the winding-up of any Company under this Act, it appears that any past or present director, manager, official or other liquidator, or any officer of such Company, has misapplied or retained in his own hands, or become liable or accountable for, any monies of the Company, or been guilty of any misfeasance or breach of trust in relation to the Company, the Court may, on the application of any liquidator or of any creditor or contributory of the Company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, and compel him to repay any monies so misapplied or retained, or for which such officer has become liable or account-

able, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the Company by way of compensation in respect of such misapplication, retainer, misfeasance or breach of trust, as the Court thinks just(i).

Explanation I.—The banker of a Company is not, as such, an officer within the meaning of this section.

Explanation II.—Proceedings cannot be taken under this section against the representatives of a deceased officer.

Sec. 165 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 185 of the Indian Companies' Act X. of 1866, *verbatim*.

Explanation I. gives effect to the decision in *Imperial Land Co. of Marseilles*. IN RE *National Bank*, L. R. 10 Eq., 298 (cf. RE *General Provident Assurance Co.*, ex parte *National Bank*, L. R. 14 Eq., 507).

Explanation II. to the decision in *Feltom's Executors case*, L. R. 1 Eq., 219, which was followed in IN RE *British Guardian Life Assurance Co.*, 14 Ch. D., 335.

(i) Cf. sec. 149, *supra*.

The Section is upon an application under sec. 182, *supra*, applicable to a voluntary winding-up in exactly the same way as in a compulsory winding-up, or a winding-up under supervision, Buckley, 3rd ed., 324, and cases cited note (k), 4th ed., 361, note (q).

The following cases have lately been decided under this section:—

IN RE *National Funds Assurance Co.*, 10 Ch. D., 118, where it was held that, inasmuch as the creditors of a limited Company are entitled by virtue of a contract between themselves and the Company, implied if not expressed, to have the capital of the Company reserved for payment of their claims, the repayment by the directors to the shareholders of the whole or any part of the capital, either in the form of interest on share warrants issued under the Companies' Act, 1867, sec. 27 or otherwise, and whether such repayment was made with the sanction of the shareholders or not, was, unless such repayment was expressly authorised by the articles of association, *ultra vires*, and a breach of trust; and that upon the Company being ordered to be wound-up the Court would, upon an application either by the liquidator or by a creditor, under sec. 165 of the English Act, order the directors jointly and severally to make good the amount of capital so repaid, but without prejudice to the right of the directors to recover the amount from the shareholders if the repayment had been made with the sanction of the shareholders. The liability of each director was, however, limited to those sums which he had participated in paying. And see also IN RE *Alexandra Palace Co.*, 21 Ch. D., 149, where directors were held liable for payments of dividends out of capital, but were also held entitled to be indemnified by any shareholders or creditors of the Company who were parties or privies to such payments. See also IN RE *Exchange Banking Co.*, *Flitcroft's case*, 21 Ch. Div., 519, where it was held that payment of dividend out of *corpus* was *ultra vires* the Company, and could not be ratified by the shareholders.

Liability of directors for payment of dividends out of capital.

A person who was cognizant of, but not a party to improper payments on the formation of a Company, and subsequently became a director of

the Company, is not liable for "wilful default" or "misfeasance" under the above section because he did not take any steps to recover the money for the Company, IN *RE Forest of Dean Coal Mining Co.*, 10 Ch. D., 450.

Directors.

Where a director bought at a discount fully-paid-up shares from the vendor of a mine to the Company, the *onus* of proving *when* the purchase was made (i.e. before or after the directors had adopted the agreement for purchase made with the vendor) was held to lie upon the director, and in the absence of evidence to the contrary, it must be taken to have been made before the adoption of the agreement, and consequently at a time when the director could not exercise an unbiassed judgment on behalf of the Company. The director, therefore, was held liable to contribute to the assets of the Company the full value of the shares less what he had given for them. At the hearing of the appeal the director, who was the only living person who was acquainted with the transaction, was not allowed to give his own oral testimony to prove that he had purchased the shares *after* the agreement had been adopted by the directors. IN *RE West Jewell Tin Mining Co., Weston's case*, 10 Ch. Div., 579.

The principles laid down in *McKay's case* (2 Ch. Div., 1) and *Pearson's case* (5 Ch. Div., 336) viz., that a director being in a fiduciary position to his Company cannot retain a consideration received by him from the promoters as an inducement to become a director; and, if the consideration has been a gift of fully paid-up shares, that he may be compelled not only to restore the shares but to account to the Company for the highest value to be attributed to them since they have been in his possession; are equally applicable to proceedings in an action by the Company to recover the value of the shares, as to proceedings under the Companies' Act 1862, sec. 165, for the same purpose; and the director is further chargeable with interest on the highest value of the shares, *Nant-Y-glo and Blaenau Ironworks Co. v. Grave*, 12 Ch. D., 738.

The obligation in such cases is upon the director to show that, by reason of special circumstances, he is not chargeable with the full value of the shares, per *Jessel*, IN *RE Diamond Fuel Co., Metcalfe's case*, 13 Ch. Div., 169, 173.

And where a class of directors or other officers are liable, but one or more of them may be dead, the liquidator may proceed under the above section against the survivors, IN *RE British Guardian Life Assurance Society*, 14 Ch. D., 335.

What required to create liability.

Merely acting as a director without qualification is not a "misfeasance" within the meaning of the section. To make a person liable under it he must be shown to have been guilty of some misconduct by which the Company has suffered loss, IN *RE Canadian Land Reclaiming and Colonizing Co., Coventry and Dixon's case*, 14 Ch. Div., 660, *sed vide* IN *RE Anglo-French Co-operative Society*, ex parte *Pelly*, 21 Ch. Div., 492, where *Coventry and Dixon's case* is commented upon. See also IN *RE Exchange Banking Co., Flitcroft's case*, 21 Ch. Div., 519, where it was held that IN *RE National Funds Assurance Co.*, 10 Ch. Div., 118, is not affected by the decision in *Coventry and Dixon's case*, 14 Ch. Div., 660; the latter case having only decided that under this section directors cannot be made liable for anything (except perhaps for interest) for which they could not be made liable independently not of the Act, but of this particular section.

Where directors passed a resolution to pay a promoter £3,000 for services rendered upon an understanding, not reduced to writing, that he should expend £400 in advertisements, and advance £2,600 to the Company on the security of debentures of the Company, and the promoter spent £400 on advertisements as agent, and advanced £2,600 to the Company on debentures which he divided between himself and certain of the directors, it was held that the directors were jointly and severally liable to repay to the Company the £2,600; that the advance of the money to the Company on the debentures was not a repayment to the

Company; and that it made no difference whether the arrangement to invest the money in debentures under which it was originally paid to the promoter was binding or not. *Per Brett, L. J.*, "The moment you have paid away a person's money wrongfully he is damaged to the extent of that payment. Nothing can lessen the extent of that damage unless the money has been, before the supposed action has been brought, paid back into the hands of the person from whom it has been taken as free to him as it was before. Now it is true that the money has gone back into the hands of the Company, but it has not gone back into the hands of the Company as free in their hands as it was before it was paid out; because it was paid back to the Company for debentures issued by them." But the director's appeal was dismissed without prejudice to any application they might make in respect of the debentures. *IN RE Anglo-French Co-operative Society*, ex parte *Pelly*, 21 Ch. Div., 492, 510.

See further as to the joint and several liability of directors for the full value of their shares, which had been provided for them by the promoter as their qualification, *IN RE Carriage Co-operative Supply Association*, 27 Ch. D., 322.

"If a promoter from whom it is sought to enforce repayment of promotion money is, or has been, at the time of the misfeasance, an officer of the Company within this section, the summary jurisdiction may be employed against him," Buckley, 4th ed., 365, where also the cases as to the promoter's right to prove for services rendered are collected; to which add *IN RE Rotherham Alum and Chemical Co.*, 25 Ch. Div., 107, where the solicitor who had been employed by the promoter of the Company was held not entitled to prove against the Company for the costs of its formation, as his services had been rendered on the retainer of the promoter only, and there was not sufficient evidence to show that the Company itself had agreed to pay him. In this case *IN RE Hereford Wagon Co.*, 2 Ch. Div., 621, was considered.

Although where a trustee receives money upon an express trust and wastes it the Statute of Limitations does not run against the claim of the *cestui que trust*, yet where a trustee receives money not belonging to the *cestui que trust*, but which the *cestui que trust* can claim on the ground that the receipt of it was a fraud upon him, the Statute of Limitations will run against the claim of the *cestui que trust* from the time when he discovers the fraud. *Metropolitan Bank v. Hieron*, 5 Ex. Div., 319.

But where the act of the director is impeached as a breach of trust, not on the ground of tort or misfeasance, no Statute of Limitations nor any bar by analogy to the Statute can be relied on; *IN RE Exchange Banking Co.*, *Flitcroft's case*, 21 Ch. Div., 519.

As to whether or not the Court will consider a claim under this section to be stale, see *IN RE Alexandra Palace Co.*, 21 Ch. D., 149, where *Fry J.* at p. 162 distinguishes *IN RE Mammoth Copperopolis of Utah*, 50 L. J. (Ch.) 11.

The discharge of a bankrupt promoter will not release him from a debt incurred to the Company in respect of secret profit made by him, inasmuch as it is a debt incurred by "fraud" and "breach of trust" within sec. 49 of the English Bankruptcy Act, 1869: *Emma Mining Co. v. Grant*, 17 Ch. D., 122; 11 Ch. D., 933: see sec. 28 of the English Bankruptcy Act (46 and 47 Vic., c. 52), 1883.

Cf. sec. 51 of the Indian Insolvent Act (*post*, appendix) and *IN RE Cowie*, 1 L. R. 6 Cal., 70; 7 Cal. Rep., 19.

The position of a director who has been ordered under this section to refund monies but has failed to do so is not that of a defaulting trustee, within sec. 4 of the Debtors' Act of 1869, but that of a shareholder who has not paid the full amount due from him. *IN RE Diamond Fuel Co.*, *Metcalf's case*, 13 Ch. D., 815.

Non-feasance is not misfeasance within this section. *IN RE Forest of Dean Co.*, 10 Ch. D., 450; *IN RE Wedgwood Co.*, 47 L. T., 612; 31 W. R., 181.

But a Company cannot complain of an act of which all its members were cognizant, and which, as far as they could, they approved of and

confirmed. *IN RE Ambrose Lake Tin and Copper Mining Co.*, ex parte *Taylor*, ex parte *Moss*, 14 Ch. Div., 390, and see also *IN RE British Seamless Paper Co.*, 17 Ch. Div., 467.

Set-off.

A director cannot set-off a debt due to him from the Company for money advanced by him for expenses against his liability under this section for the misappropriation of the Company's money, *IN RE Anglo-French Co-operative Society*, ex parte *Pelly*, 21 Ch. Div., 493; see also on this point *IN RE Exchange Banking Co.*, *Flitcroft's case*, 21 Ch. Div., 519, and *IN RE Carriage Co-operative Supply Association*, 27 Ch. D., 322.

But a Company cannot set-off a sum of money which a director has been ordered to pay under this section against dividends payable to an assignee of debts due from the Company; such debts having been purchased by the assignee *bonâ fide* and for value from the director, who had purchased the debts from the original creditors of the Company, and had assigned them before he was ordered to pay the sum of money under this section, *IN RE The Milan Tramways Co.* ex parte *Theys*, 52 L. J. Ch. D., 29; 25 Ch. Div., 587.

Claims under this section against a director are "things in action" within sec. 95 of the English Companies' Act, 1862, and assignable by the official liquidator, and a misfeasant by purchasing such claims can prevent proceedings being taken, *IN RE Parkgate Wagon Co.*, 17 Ch. Div., 234. See sec. 144, *supra*.

Innocent director not liable for frauds of co-directors.

But an innocent director of a Company is not liable under this section for the fraud of his co-directors in issuing to the shareholders false and fraudulent reports and balance sheets, if the books and accounts of the Company have been kept and audited by duly appointed and responsible officers, and he has no ground for suspecting fraud. Nor is a director bound to examine entries in any of the Company's books; nor is the doctrine of constructive notice to be so extended as to impute to him a knowledge of the contents of the books. *IN RE Denham & Co.*, 25 Ch. D., 752.

If a director sells property of his own to a Company at a profit, the Company cannot recover such profit from him if the recession of the contract has become impossible, *IN RE Cape Breton Co.*, 26 Ch. D., 221.

For forms of orders under this section, see *Palmer's Precedents*, 3rd ed., p. 508.

Penalty on falsification of books.

215. If any director, officer or contributory of any Company wound-up under this Act destroys, mutilates, alters, falsifies, or fraudulently secretes any books, papers, writings or securities, or makes, or is privy to the making of, any false or fraudulent entry in any register, book of account or other document belonging to the Company, with intent to defraud or deceive any person, every person so offending shall be punished with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to five hundred rupees.

Sec. 166 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, which concludes as follows: "every person so offending shall be deemed guilty of a misdemeanour, and upon being convicted shall be liable to a term of imprisonment for any term not exceeding two years, with or without hard labour." Sec. 186 of the Indian Companies' Act X. of 1866 concluded thus: "every person so offending shall

be punished with imprisonment of either description, as defined in the Indian Penal Code, for a term which may extend to two years, &c."

Cf. sec. 76 of Act XIX. of 1857.

Sec. 53 of the Indian Penal Code XLV. of 1860 defines imprisonment as "rigorous, that is with hard labour" or "simple."

The words "fraudulently secretes" are omitted from the English Companies' Act, and are inserted in the Indian Acts "to provide for an offence not unlikely to occur in India." Whitley Stokes, Indian Companies' Act, 1866, p. 71.

216. Where any order is made for winding-up a Company by the Court or subject to the supervision of the Court, if it appear in the course of such winding-up that any past or present director, manager, officer or member of such Company has been guilty of any offence in relation to the Company for which he is criminally responsible, the Court may, on the application(i) of any person interested in such winding-up or of its own motion, direct the official liquidators or the liquidators (as the case may be) to institute a prosecution for such offence, and may order the costs and expenses of such prosecution to be paid out of the assets of the Company.

Prosecution of delinquent directors in the case of winding-up by Court.

Sec. 167 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 187 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Application under this section is to be made by petition, see rule 49, *post*, Appendix.

Where the Court was satisfied, upon a petition presented by the liquidator for a direction that he should prosecute a director at the expense of the assets, that the opposition to the petition came, not from a desire to save the assets, but from a desire to save the director, and that if the petition were not at once acceded to there would be risk of justice being defeated, a prosecution was at once directed without further consulting the creditors of the Company, IN RE *Charles Denham & Co.*, 32 W. R. (Eng.) 920 (*Chitty, J.*)

In the English Act there follows a section (168) as follows:—"Where a Company is being wound-up altogether voluntarily, if it appear to the liquidators conducting such winding-up that any past or present director, manager, officer or member of such Company has been guilty of any offence in relation to the Company for which he is criminally responsible, it shall be lawful for the liquidators, with the previous sanction of the Court, to prosecute such offender, and all expenses properly incurred by them in such prosecution shall be payable out of the assets of the Company in priority to all other liabilities."

"The above section was omitted because the case was supposed to be sufficiently provided for by the Penal Code," Stokes, p. 71.

217. If any person, upon any examination upon oath authorized under this Act, or in any affidavit, deposition or solemn affirmation, in or about the winding-up of any Company under this Act or

Penalty for false evidence

otherwise in or about any matter arising under this Act, intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years and shall also be liable to fine.

Sec. 169 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, concludes thus: "wilfully and corruptly gives false evidence, he shall, upon conviction, be liable to the penalties of wilful perjury." Sec. 188 of the Indian Companies' Act X. of 1866 concludes thus: "intentionally gives false evidence, he shall, upon conviction, be liable to imprisonment of either description, as defined in the Indian Penal Code, for a term, &c."

As to false evidence generally see the Indian Penal Code (Act XLV. of 1860), Chap. XI. secs. 191, et seqq.

In the English Act there follow secs. 170-173, relating to the powers of the Lord Chancellor of Great Britain, the Court of Session in Scotland, the Vice-Warden of the Stannaries, and of the Lord Chancellor of Ireland, to make rules as regards winding-up; and in the Indian Act, sec. 189, empowering the High Court to make rules concerning the mode of proceeding for winding-up. See in this Act, sec. 254, *post*.

Winding-up
may be
referred to
District
Court.

218. Where the High Court makes an order for winding-up a Company under this Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court; and thereupon such District Court shall, for the purpose of winding-up the Company, be deemed to be "the Court" within the meaning of this Act, and shall have, for the purposes of such winding-up, all the jurisdiction and powers of the High Court.

This section is new.

Cf. sec. 265 of the Indian Contract Act IX. of 1872, as to the jurisdiction of District Courts over partnership suits; as to which see *Sorabji Furdoonjee v. Dulabai Hargorundas*, 1. L. R., 5 Bom. 65; *Prosad Doss Mullick v. Russick Lall Mullick*, 1. L. R., 7 Calc., 157; 8 Calc., 329; *Chunder Shaha v. Manick Chunder Banickya*, 1. L. R. 7 Calc., 428; *Ramasami v. Theruvengadasami*, 1. L. R., 1 Mad., 340, and *Ramaya v. Chandra Sekaya*, 1. L. R., 5 Mad., 256.

Under Act XIX. of 1857 it was held that no appeal lay from an order of a District Judge placing the name of an alleged allottee on the list of contributories of a Company which was being wound-up under that Act; *Janiyatram Himmatram v. The Gujarat Trading Co.*, 6 Bom. H.C. A. C. J. 185, 1866; see now sec. 169, *supra*.

An order made by a Court in the Mofussil of the Bombay Presidency to wind-up a Company may, under sec. 288 of Act VIII. of 1859, be executed by the High Court of Bombay, by staying suits against the Company under sec. 72 of Act XIX. of 1857; but such claim will only take effect from the date of its being filed in the High Court, and suits can only be stayed from that time. Where a decree in a suit has actually been executed by the attachment of property, though the sum decreed may not have been realized by sale, there is no longer any suit or action to be stayed under Act XIX. of 1857, sec. 72, from which section however the word "proceeding" was omitted, as to which see

supra. *Motiram Dalpatram v. Guzarat Trading Co.*, 3 Bom. H. C. O. C. J., 20.

See the definition of "the Court," *supra*, sec. 3 and sec. 130, *supra*, and "District Court," sec. 3.

219. If during the progress of a winding-up in a District Court it is made to appear to the High Court that the same could be more conveniently prosecuted in any other District Court, the High Court may transfer the same to such other Court, and thereupon the winding-up shall proceed in such other District Court.

As to transfer of winding-up from one District Court to another.

This section also is new.

Query. Whether an appellant from an order of a District Court in a winding-up would have ninety days from the date of the order to appeal to the High Court under No. 156 of Sched. II. of the Limitation Act (XV. of 1877); or would he be limited to the three weeks provided for by sec. 169, *supra*? For the rule of construction in such cases, per *Bovill, C. J.* in *The Queen v. Champneys*, L. R. 6 C. P., 384. "It is a fundamental rule in the construction of statutes, that a subsequent statute in general terms is not to be construed to repeal a previous particular statute unless there are express words to indicate that such was the intention, or unless such an intention appears by necessary implication." See also *Thorpe v. Adams*, L. R. 6 C. P. 125; and *Unoda Persaud Mookerjee v. Kristo Coomar Moiteo*, 15 Beng. L. R. 60 (note) P. C. 19 *Suth. W. R.* 4.

PART V.

REGISTRATION-OFFICE.

220. The registration of Companies under this Act shall be conducted as follows (that is to say):—

Constitution of registration office.

(a) The Local Government may, after the sanction of the Governor-General in Council to the creation of any such offices shall have been obtained, from time to time appoint such Registrars, Assistant Registrars, clerks and servants as it may think necessary for the registration of Companies under this Act, and remove them at pleasure :

(b) The Local Government may make such regulations as it thinks fit with respect to the duties to be performed by any such Registrars, Assistant Registrars, clerks and servants as aforesaid :

(c) The Local Government may from time to time determine the places at which offices for the registration of Companies are to be established, so that there be at all times maintained in each of the towns of Calcutta, Madras and Bombay, at least one

such office, and that no Company shall be registered except at an office within that part of British India in which, by the memorandum of association, the registered office of the Company is declared to be established :

(d) The Local Government may from time to time direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of Companies :

(e) Every person may inspect the documents kept by the Registrar of joint stock Companies. There shall be paid for such inspection such fees as may be directed by the Local Government, not exceeding one rupee for each inspection. Any person may require a certificate of the incorporation of any Company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar. There shall be paid for such certificate of incorporation, certified copy or extract, such fees as the Local Government may direct, not exceeding three rupees for the certificate of incorporation, and not exceeding two annas for each hundred words of such copy or extract :

(f) The existing Registrar, Assistant Registrars, clerks and other officers and servants in the office for the registration of joint stock Companies shall, during the pleasure of the Local Government, hold the offices and receive the salaries hitherto held and received by them, but they shall in the execution of their duties conform to any regulations that may be issued by the Local Government :

(g) There shall be paid to any Registrar, Assistant Registrar, clerk or servant that may hereafter be employed in the registration of joint stock Companies such salary as the Local Government may, with the sanction of the Governor-General in Council, direct :

(h) Whenever any act is herein directed to be done to or by the Registrar of joint stock Companies, such act shall, until the Local Government otherwise directs, be done to or by the existing Registrar of joint stock Companies, or in his absence to or by such person as the Local Government may

for the time being authorize. But, in the event of the Local Government altering the constitution of the existing registry-office, such act shall be done to or by such officer or officers, and at such place or places with reference to the local situation of the registered offices of the Companies to be registered, as the Local Government may appoint.

Sec. 174 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting "Local Government" for "Board of Trade" in that section, and *mutatis mutandis*; and sec. 190 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 97 of Act XIX. of 1867.

As to "Local Government" see the General Clauses Act I. of 1863, sec. 2 (o), where it is defined to mean "the person authorized by law to administer executive government in the part of British India in which the Act containing such expression shall operate, and shall include a Chief Commissioner."

In the English Act the above sec. (174) is followed by sec. 175, which contains the definition of "Joint Stock Companies' Acts" (under Part VI).

PART VI.

APPLICATION OF ACT TO COMPANIES REGISTERED UNDER THE JOINT STOCK COMPANIES' ACTS.

221. Subject as hereinafter mentioned, this Act with the exception of table A in the first schedule, shall apply to Companies formed and registered under Act No. XIX. of 1857 and Act No. VII. of 1860, or either of them, in the same manner, in the case of a limited Company, as if such Company had been formed and registered under this Act as a Company limited by shares, and, in the case of a Company other than a limited Company, as if such Company had been formed and registered as an unlimited Company under this Act; with this qualification, that, wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Acts or either of them, and the power of altering regulations by special resolution given by this Act (i) shall, in the case of any Company formed and registered under the said Acts or either of them, extend to altering any provisions contained in the table

Application
of Act to
Companies
formed under
Act XIX. of
1857 or VII.
of 1860.

marked B annexed to Act No. XIX. of 1857⁽ⁱⁱ⁾, and shall also, in the case of an unlimited Company formed and registered as last aforesaid, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that such regulations are contained in the memorandum of association.

Cf. sec. 176 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 191 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See sec. 76, *supra*, and sec. 240 (c) and (d) *post*.

(ii) See appendix, *post*.

"Nothing is here said as to Act XLIII. of 1850 which, though repealed by Act XIX. of 1857, sec. 98, may still be in force as to such Companies (if any) registered under the former Act as have not been registered under Act XIX. of 1857."—Stokes, p. 74.

This is an *enabling*, not a *disabling*, section; (see *Prince v. Prince*, L. R. 1 Eq. 490); and a Company registered under the former Acts may be wound-up voluntarily without being re-registered under the Companies' Act, IN *RE London India-rubber Co.*, L. R. 1 Ch. Ap., 229.

Application
of Act to
Companies
registered
under Act
XIX. of 1857
or VII. of
1860.

222. This Act shall apply to Companies registered but not formed under the said Acts or either of them, in the same manner as it is hereinafter(i) declared to apply to Companies registered but not formed under this Act; with this qualification, that, wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Acts or either of them.

Cf. sec. 177 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 192 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See sec. 240, *infra*.

Mode of
transferring
shares.

223. Any Company registered under the said Acts or either of them may cause its shares to be transferred in manner hitherto in use, or in such other manner as the Company may direct.

Cf. sec. 178 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 193 of the Indian Companies' Act X. of 1866, *verbatim*.

See IN *RE East Indian Trading and Banking Co.*; *Jamnadas Sarahlale's case*, 3 Bom. H. C. O. C. J., 113, *post*, note to art. 8, table A.

PART VII.

COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

224. With the exceptions made in the next following section and subject to the regulations therein contained, every Company existing at the time of the commencement of this Act, including any Company registered under either of the said Acts⁽ⁱ⁾, consisting of seven or more members, and any Company hereafter formed in pursuance of any Act of Parliament or Act of the Governor-General in Council other than this Act, or of Letters Patent, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this Act as an unlimited Company, or a Company limited by shares, or a Company limited by guarantee, and no such registration shall be invalid by reason that it has taken place with a view to the Company being wound-up.

Companies capable of being registered.

Cf. sec. 180 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 194 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) "These Companies may register under this Act, but the Act applies to them though not so registered," sec. 221, *supra*; Buckley, 4th ed., 376.

225. The following regulations shall be observed with respect to the registration of Companies under this part of this Act (that is to say):—

Regulations as to registration of existing Companies.

(a) No Company having the liability of its members limited by Act of Parliament or Act of the Governor-General in Council other than this Act, or by Letters Patent, and not being a joint stock Company as hereinafter defined⁽ⁱ⁾, shall register under this Act in pursuance of this Part thereof.

(b) No Company having the liability of its members limited by Act of Parliament or Act of the Governor-General in Council other than this Act, or by Letters Patent, shall register under this Act, in pursuance of this part thereof as an unlimited Company, or as a Company limited by guarantee:

(c) No life-assurance Company existing at the time of the commencement of this Act⁽ⁱⁱ⁾, and no Company that is not a joint stock Company as

hereinafter defined(i) shall in pursuance of this Part of this Act register under this Act as a Company limited by shares :

(d) No Company shall register under this Act in pursuance of this Part thereof unless an assent to its so registering is given by a majority of such of its members as may be present personally, or by proxy in cases where proxies are allowed by the regulations of the Company, at some general meeting summoned for the purpose :

(e) Where a Company, not having the liability of its members limited by Act of Parliament, or Act of the Governor-General in Council, or by Letters Patent, is about to register as a limited Company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present, personally or by proxy, at such last-mentioned general meeting :

(f) Where a Company is about to register as a Company limited by guarantee(iii), the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the Company, in the event of the same being wound-up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceased to be a member, and the costs, charges and expenses of winding-up the Company, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

In computing any majority under this section, when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the Regulations of the Company of which he is a member.

Sec. 179 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, inserting in clauses (a) and (b) and (e) the words " or Act of the Governor-General in Council" ; and to clause (c) prefixing the words " No Life Assurance Company existing at the time of the commencement of this Act, and" &c. ; and sec. 195 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See sec. 226.

(ii) "This was introduced to prevent Life Assurance Companies with unlimited liability existing on the 1st May 1866 from registering as limited Companies," Stokes, p. 76.

(iii) Sec. 9, *supra*.

"The common law of the country as to voting at meetings is that votes at all meetings are taken by show of hands, and what is to be done when a poll is demanded is not to be done when a poll is not demanded," see per *Jessel, M. R.*, IN RE *Horbury Bridge Coal Iron and Wagon Co.*, 11 Ch. Div., 115.

226. For the purposes of this Part of this Act, so far as the same relates to the description of Companies empowered to register as Companies limited by shares, a joint stock Company shall be deemed to be a Company having a permanent paid-up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons; and such Company, when registered with limited liability under this Act, shall be deemed to be a Company limited by shares.

Definition of "joint stock Company."

Sec. 181 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 196 of the Indian Companies' Act X. of 1866, *verbatim*.

Here followed in the English Act, sec. 182, which provided that the liability of limited Banking Companies issuing notes is unlimited in respect of such notes. In India there are no such notes, and the above sec. 182 of the English Act has been repealed by sec. 6 of the Companies' Act of 1879 (42 and 43 Vic., c. 76), and a substituted section enacted. Buckley, 4th ed., 376.

227. Previously to the registration, in pursu-
ance of this Part of this Act, of any joint stock
Company(i), there shall be delivered to the Registrar
the following documents (that is to say):—

Requisitions for registration by Companies.

(a) A list showing the names, addresses and occupations of all persons who, on a day named in such list and not being more than six clear days before the day of registration, were members of such Company, with the addition of the shares held by such persons respectively, distinguishing in cases where such shares are numbered, each share by its number:

(b) A copy of any Act of Parliament or Act of the Governor-General in Council, Royal Charter,

Letters Patent, deed of settlement, contract of copartnery or other instrument constituting or regulating the Company :

(c) If any such joint stock Company is intended to be registered as a limited Company, the above list and copy shall be accompanied by a statement specifying the following particulars (that is to say):—

the nominal capital of the Company and the number of shares into which it is divided ;

the number of shares taken and the amount paid on each share ; the name of the Company, with the addition of the word “limited” as the last word thereof(ii) ;

with the addition, in the case of a Company intended to be registered as a Company limited by guarantee, of the resolution declaring the amount of the guarantee.

Sec. 183 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, inserting in clause (b) the words “or Act of the Governor-General in Council” ; and sec. 197 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Sec. 226, *supra*.

(ii) Sec. 234, *post*.

Requisitions
for registra-
tion by
existing
Company not
being a joint
stock
Company.

228. Previously to the registration in pursuance of this Part of this Act of any Company not being a joint stock Company(i), there shall be delivered to the Registrar a list showing the names, addresses and occupations of the directors or other managers (if any) of the Company, also a copy of any Act of Parliament, Act of the Governor-General in Council, Letters Patent, deed of settlement, contract of copartnery or other instrument constituting or regulating the Company, with the addition, in the case of a Company intended to be registered as a Company limited by guarantee, of the resolution declaring the amount of the guarantee.

Sec. 184 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, inserting the words “Act of the Governor-General in Council” ; and sec. 198 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Sec. 226, *supra*.

229. Where a joint stock Company⁽ⁱ⁾ authorized to register under this Act has had the whole or any portion of its capital converted into stock, such Company shall, as to the capital so converted, instead of delivering to the Registrar a statement of shares, deliver to the Registrar a statement of the amount of stock belonging to the Company, and the names of the persons who were holders of such stock, on some day to be named in the statement, not more than six clear days before the day of registration.

Power for existing Company to register amount of stock instead of shares.

Sec. 185 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 199 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) Sec. 226, *supra*.

230. The lists of members and directors and any other particulars relating to the Company hereby required to be delivered to the Registrar shall be verified by declaration of the directors of the Company delivering the same, or any two of them, or of any two other principal officers of the Company, made before a Justice of the Peace or a District Judge.

Authentication of statements of existing Companies.

Sec. 186 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting the words "made before a Justice of the Peace," &c. for "made in pursuance of the Act passed in the sixth year of his late Majesty, King William the Fourth, chapter sixty-two"; and sec. 200 of the Indian Companies' Act X. of 1866, *verbatim*.

231. The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing Company is or not a joint stock Company as hereinbefore defined⁽ⁱ⁾.

Registrar may require evidence as to nature of Company.

Sec. 187 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 201 of the Indian Companies' Act X. of 1866, *verbatim*.

Sec. 226, *supra*.

232. Every banking Company existing at the date of the passing of this Act which registers itself as a limited Company shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register the same to every person and partnership firm having a banking account with the Company.

On registration of banking Company with limited liability, notice to be given to customers.

Such notice shall be given either by delivering the same to such person or firm, or leaving the same, or putting the same into the post addressed to him or them, at such address as shall have been last communicated or otherwise become known as his or their address to or by the Company.

In case the Company omits to give any such notice as in hereinbefore required to be given, then, as between the Company and the person or persons only who are for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice shall be given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Sec. 188 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 202 of the Indian Companies' Act X. of 1866, *verbatim*.

As to the effect of registration see sec. 41 *supra*, p. 30, and sec. 240, *post*.

Exemption
of certain
Companies
from pay-
ment of fees.

233. No fees shall be charged in respect of the registration in pursuance of this Part of this Act of any Company in cases where such Company is not registered as a limited Company, or where, previously to its being registered as a limited Company, the liability of the shareholders was limited by some Act of Parliament, or Act of the Governor-General in Council, or by Letters Patent.

Sec. 189 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, inserting the words "or Act of the Governor-General in Council"; and sec. 203 of the Indian Companies' Act X. of 1866, *verbatim*.

Company to
change name.

234. Any Company authorized by this Part of this Act to register with limited liability shall, for the purpose of obtaining registration with limited liability change its name by adding thereto the word "limited(i)."

Sec. 190 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 204 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 103 of Act XIX. of 1857.

(i) See sec. 227 (c), *supra*.

235. Upon compliance with the requisitions in this Part of this Act contained with respect to registration, and on payment of such fees, if any, as are payable under the tables marked B and C in the first schedule hereto, the Registrar shall certify under his hand that the Company so applying for registration is incorporated as a Company under this Act, and, in the case of a limited Company, that it is limited; and thereupon such Company shall be incorporated, and shall have perpetual succession and a common seal.

Certificate of registration of existing Companies.

Sec. 191 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, which concludes thus: "with power to hold lands; and any banking Company in Scotland so incorporated shall be deemed and taken to be a bank incorporated, constituted, or established under Act of Parliament"; and sec. 205 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 102 of Act XIX. of 1857.

As to the omission of the words "with power to hold lands" see note to sec. 41, *supra*, p. 30.

236. A certificate of incorporation given at any time to any Company registered in pursuance of this Part of this Act shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the Company is authorized to be registered under this Act as a limited or unlimited Company, as the case may be; and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the Company is incorporated under this Act.

Certificate to be evidence of compliance with Act.

Sec. 192 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 206 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 104 of Act XIX. of 1857.

(i) See sec. 41, *supra*.

As to banking Companies, see sec. 232, *supra*.

237. All such property, moveable and immovable, including all interests and rights in, to and out of property, moveable and immovable, and including obligations and actionable claims, as may belong to or be vested in the Company at the date of its registration under this Act, shall, on registration, pass to and vest in the Company as

Transfer of property to Company.

incorporated under this Act for all the estate and interest of the Company therein.

Sec. 193 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting "moveable and immoveable" for "real and personal" and "actionable claims" for "things in action" in that section; and sec. 207 of the Indian Companies' Act X. of 1866, substituting "actionable claims" for "things in action" in that section.

Registration under this Act not to affect obligations incurred previously to registration.

238. The registration in pursuance of this Part of this Act of any Company shall not affect or prejudice the liability of such Company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into by, to, with or on behalf of such Company previously to such registration.

Sec. 194 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 208 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 105 of Act XIX. of 1857.

There is no provision in this Act corresponding to the latter part of 19 and 20 Vic., c. 47, s. 116, the English Act of 1856 (which corresponded with sec. 105 of Act XIX. of 1857), which provided as follows: "the registration of any existing Company under this Act shall not, nor shall any act of the Company subsequent to such registration, prejudice any right which previously to such registration has, or which would, if no such registration had taken place, have accrued to any creditor or other person against the Company in its corporate capacity, in respect of any act done or liability incurred previously to such registration, or against any person then being or having been a member of such Company; *but every such creditor or other person shall be entitled in respect of any such act or liability to all such remedies against the Company in its corporate capacity, and against every person then being or having been a member of such Company, as he would have been entitled to in case such registration had not taken place.* As to the effect of this omission from the English Act of 1862, see Buckley, 4th ed., 380; and cases there cited.

Continuation of existing suits.

239. All such suits and other legal proceedings as may at the time of the registration of any Company registered in pursuance of this Part of this Act have been commenced by or against such Company, or the public officer or any member thereof, may be continued in the same manner as if such registration had not taken place. Nevertheless, execution shall not issue against the effects of any individual member of such Company upon any decree or order obtained in any suit or proceeding so commenced as aforesaid; but in the event of the property and effects of the Company being insufficient to satisfy such decree or order, an order may be obtained for winding-up the Company.

Sec. 195 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 209 of the Indian Companies' Act X. of 1866, *verbatim*.

See the cases cited by Mr. Buckley in note to sec. 195 of the English Act as to the liability of a shareholder in an unregistered Company which has been registered after he has parted with his shares, 4th ed., 381.

240. When a Company is registered under this Act in pursuance of this Part thereof, all provisions contained in any Act of Parliament, Act of the Governor-General in Council, deed of settlement, contract of copartnery, Letters Patent, or other instrument constituting or regulating the Company, including, in the case of a Company registered as a Company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the Company in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association; and all the provisions of this Act shall apply to such Company and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject to the provisions following (that is to say):—

Effect of
registration
under Act.

(a) That table A in the first schedule to this Act shall not, unless adopted by special resolution(i), apply to any Company registered under this Act in pursuance of this Part thereof:

(b) That the provisions of this Act relating to the numbering of shares(ii) shall not apply to any joint stock Company whose shares are not numbered:

(c) That no Company shall have power to alter any provisions contained in any Act of Parliament, Act of the Legislative Council or Act of the Governor-General in Council relating to the Company:

(d) That no Company shall have power, without the sanction of the Governor-General in Council, to alter any provision contained in any Letters Patent relating to the Company:

(e) In the event of the Company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the Company contracted prior to registration, who is liable to pay or contri-

bute to the payment of any debt or liability of the Company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges and expenses of winding-up the Company, so far as relates to such debts or liabilities as aforesaid. Every such contributory shall be liable to contribute to the assets of the Company, in the course of the winding-up all sums due from him in respect of any such liability as aforesaid(iii). In the event of the death or insolvency of any such contributory as last aforesaid, the provisions hereinbefore contained(iv) with respect to the representatives, heirs and devisees of deceased contributories, and with reference to the assignees of insolvent contributories, shall apply :

(f) Nothing herein contained shall authorize any Company to alter any such provisions contained in any deed of settlement, contract of copartnery, Letters Patent or other instrument constituting or regulating the Company, as would, if such Company had originally been formed under this Act, have been contained in the memorandum of association(v), and are not authorized to be altered by this Act :

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any Company registering under this Act in pursuance of this Part thereof by virtue of any Act of Parliament, Act of the Governor-General in Council, deed of settlement, contract of copartnery, Letters Patent or other instrument constituting or regulating the Company.

Sec. 196 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, adding in the first paragraph the words "Act of the Governor-General in Council" and omitting the words "cost-book regulations" after "contract of copartnery"; adding in clause (c) the words "Act of the Legislative Council or Act of the Governor-General in Council"; substituting in clause (d) the words "of the Governor-General in Council" for "of the Board of Trade"; omitting from the last sentence in clause (e) the words "or marriage of any such contributory, being a female" and "and to the husbands of married contributories" (as to which words see *supra*, p. 97);

from clause (f) omitting the words "cost-book regulations"; and in the last paragraph inserting the words "Act of the Governor-General in Council"; and sec. 210 of the Indian Companies' Act X. of 1866, *verbatim*, save that that section in the last paragraph of cl. 5 (corresponding to clause (c) in the present section) contains the words "or marriage of any such contributory, being a female," and "and to the husbands of married contributories," which words were left in the section in Act X. of 1866, *per incuriam*, Stokes, p. 82. See *supra*, p. 97.

- (i) See sec. 77, *supra*, p. 71.
- (ii) See sec. 44, *supra*, p. 32.
- (iii) See sec. 61, *supra*, p. 53, and sec. 244, *post*.
- (iv) Secs. 126, 127, 154, 155, *supra*.
- (v) Secs. 8, 9, 10, *supra*.

241. The Court may, at any time after the presentation of a petition for winding-up a Company registered in pursuance of this Part of this Act, and before making an order for winding-up the Company, upon the application of any creditor of the Company, restrain further proceedings in any suit or legal proceeding against any contributory of the Company as well as against the Company as hereinbefore provided(i), upon such terms as the Court thinks fit.

Power of Court to restrain further proceedings.

Sec. 197 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 211 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 84 of Act XIX. of 1857.

- (i) See secs. 134, 239, *supra*, and sec. 245, *post*.

242. Where an order has been made for winding-up a Company registered in pursuance of this Part of this Act, in addition to the provisions hereinbefore contained(i), it is hereby further provided that no suit or other legal proceeding shall be commenced or proceeded with against any contributory of the Company in respect of any debt of the Company, except with the leave of the Court and subject to such terms as the Court may impose.

Order for winding-up Company.

Sec. 198 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 212 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 72 of Act XIX. of 1857.

- (i) See secs. 136, 239, *supra*, and sec. 246, *post*.

PART VIII.

APPLICATION OF ACT TO UNREGISTERED COMPANIES.

Winding-up
unregistered
Companies.

243. Subject as hereinafter mentioned, any Partnership, Association or Company, except Railway Companies incorporated by Act of Parliament or Act of the Governor-General in Council, consisting of more than seven members⁽ⁱ⁾ and not registered under this Act⁽ⁱⁱ⁾, and hereinafter included under the term "unregistered Company," may be wound-up under this Act, and all the provisions of this Act with respect to winding-up shall apply to such Company, with the following exceptions and additions :—

(1) An unregistered Company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding-up, be deemed to be registered in that part of British India where its principal place of business is situate, or, if it has a principal place of business situate in more than one part of British India, then in each part of British India where it has a principal place of business. Moreover, the principal place of business of an unregistered Company, or (where it has a principal place of business situate in more than one part of British India) such one of its principal places of business as is situate in that part of British India in which proceedings are being instituted, shall for all the purposes of the winding-up of such Company be deemed to be the registered office of the Company⁽ⁱⁱⁱ⁾ :

(2) No unregistered Company shall be wound-up under this Act voluntarily^(iv), or subject to the supervision of the Court^(v) :

(3) The circumstances under which an unregistered Company may be wound-up are as follows (that is to say)^(vi) :—

(a) whenever the Company is dissolved or has ceased to carry on business, or is carrying on business only for the purpose of winding-up its affairs ;

(b) whenever the Company is unable to pay its debts ;

(c) whenever the Court is of opinion that it is just and equitable that the Company should be wound-up :

(4) An unregistered Company shall, for the purposes of this Act be deemed to be unable to pay its debts(vii)—

(a) whenever a creditor to whom the Company is indebted, by assignment or otherwise, in a sum exceeding five hundred rupees then due, has served on the Company, by leaving the same at the principal place of business of the Company or by delivering to the secretary or some director or principal officer of the Company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand requiring the Company to pay the sum so due, and the Company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor;

(b) whenever any suit or other proceeding has been instituted against any member of the Company for any debt or demand due or claimed to be due from the Company, or from him in his character of member of the Company, and notice in writing of the institution of such suit or other legal proceeding having been served upon the Company by leaving the same at the principal place of business of the Company or by delivering it to the secretary or some director, manager or principal officer of the Company, or by otherwise serving the same in such manner as the Court may approve or direct, the Company has not, within ten days after service of such notice, paid, secured or compounded for such debt or demand, or procured such suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such suit or other legal proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same;

(c) whenever execution or other process issued on a decree, or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the Company, or any member thereof as such, or against any person authorized to be

sued as nominal defendant on behalf of the Company, is returned unsatisfied;

(d) whenever it is otherwise proved to the satisfaction of the Court that the Company is unable to pay its debts.

Sec. 199 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, adding in the first paragraph the words "or Act of the Governor-General in Council," and in clause (1) substituting the words "British India" for "United Kingdom"; in clause (4) (a) omitting the words "at law or in equity" after "is indebted," and substituting "five hundred rupees" for "fifty pounds"; in clause (4) (b) omitting the word "action"; in clause (4) (c) omitting the words "in England or Ireland" after "whenever," and omitting the two clauses in the section in the English Act which relate to proceedings issued out of the Court of the Vice-Warden of the Stannaries, and out of the Scotch Courts respectively; and sec. 213 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See sec. 128 (c), *supra*, p. 98.

(ii) See secs. 221, 222, *supra*.

(iii) See sec. 63, *supra*, 58.

(iv) See sec. 173 *et seq.* *supra*.

(v) See sec. 191 *et seq.* *supra*.

(vi) Cf. sec. 128, *supra*, p. 98.

(vii) Cf. sec. 129, *supra*, p. 101.

For the meaning of "unregistered Company," see Buckley, 4th ed., 385, 386.

"Except Railway Companies," &c. See *IN RE Brentford and Isleworth Tramways Co.*, 26 Ch. D., 527; where an unregistered tramway Company incorporated by a special Act. was held not to fall within this exception, and was therefore wound-up under this section.

In *IN RE Commercial Bank of India*, L. R. 6 Eq. 517, a joint stock Company formed in India, and incorporated by registration under the Indian Law, and having its principal place of business in India, with an agent and a branch office in England, was wound-up under the English Companies' Act of 1862. This case was approved in *IN RE Matheson Brothers*, 27 Ch. D., 225.

See also *IN RE Calcutta Jute Mills Co.*, I. L. R. 5 Calc., 888, set out *supra*, p. 100, where *IN RE Agra and Masterman's Bank*, 1 Ind. Jur. N. S., 335, was distinguished. In this latter case it was held that a joint stock Company, established by deed and Royal Charter in England, under the provisions of the English Joint Stock Companies' Act, 7 and 8 Vic., c. 110, with agencies in different parts of the world, and registered under the English Companies' Act (25 and 26 Vic., c. 89), 1862, but not under any Indian Act, having its principal place of business in London, though having a principal branch in Calcutta, to which the other branches were subordinate, was not such a Company as could be wound-up as an "unregistered Company" under the Indian Companies' Act X. of 1866, but should be wound-up by the Court of Chancery; and an order of the Court of Chancery under the English Act of 1862, winding-up the Company in England, had the effect of winding-up all the branches of the Company in England and elsewhere.

This section must apply to something which can *lawfully* be formed. If the case falls within the terms of the 4th section (*supra*) the formation of the Company is prohibited, and it is impossible to suppose that the Legislature could have intended that a Company which is prohibited from being formed under the 4th section can be wound-up under the 199th (of the English Act) with all the consequences which follow from it, including the application of the 38th section (of the English Act), and the liability of the member of the unlawful association to contribute. On authority and principle therefore, such an association cannot be wound-up. See per *Jessel, M. R., IN RE Padstow Total Loss and Collision Assurance Society*, 20 Ch. Div., 137; 51 L. J., Ch. Div., 344, referred to *supra*, p. 4.

In *IN RE Bolton Benefit Loan Society*, 12 Ch. D., 679, it was held by *Jessel, M. R.*, on a creditor's petition for the winding-up of an unregistered Loan Society formed under 3 and 4 Vic. c. 110, the members of which formerly exceeded seven, but at the time of the petition were only four, that having regard to sections 199 and 200 of the Companies' Act, 1862, a winding-up order could not be made when the number of members had, at the date of the petition, fallen below seven. Upon his Lordship's suggestion, however, the petition was ordered to stand over for an action to be commenced on which a decree for dissolution might be made as in the case of a partnership, which was accordingly done, and an order made for the dissolution of the Society and the winding-up of its affairs.

As to Benefit Building Societies and other Companies which may be wound-up under this section, see Buckley, 4th ed., 386 *et seqq.* and as to the effect of a winding-up order on the position of members of a Building Society registered under the Building Societies' Act, 1874, see *Brownlie v. Russell*, 8 Ap. Ca., 235.

In *Rudow v. Great Britain Mutual Life Assurance Society*, 17 Ch. Div., 600, the Court of Appeal held that when proceedings are pending for winding-up an unregistered Company, all the provisions of Part IV. of the Companies' Act, 1862, other than those expressly excepted, are applicable; but under the circumstances of the case they declined to exercise the discretion conferred by sec. 85 of that Act with reference to staying proceedings.

244. In the event of an unregistered Company being wound-up, every person shall be deemed to be a contributory⁽ⁱ⁾ who is liable to pay or contribute to the payment of any debt or liability of the Company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges and expenses of winding-up the Company.

Who to be deemed a contributory in the event of Company being wound-up.

Every such contributory shall be liable to contribute to the assets of the Company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid.

In the event of the death or insolvency of any contributory, the provisions hereinbefore contained with respect to the personal representatives, heirs and devisees of a deceased contributory⁽ⁱⁱ⁾, and to the assignees of an insolvent contributory⁽ⁱⁱⁱ⁾, shall apply.

Sec. 200 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, omitting from the last paragraph, after "insolvency of any contributory," the words "or marriage of any female contributory," and after "assignees of a bankrupt or insolvent contributory" the words "and to the husband of married contributories"; and sec. 214 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See secs. 61, 124, 154, 240 (e).

(ii) Sec. 126, *supra*, p. 96.

(iii) Sec. 127, *supra*, p. 97.

Per James, L. J., IN RE European Society Arbitration Acts, ex parte Liquidators of the British Nation Life Assurance Association, 8 Ch. Div., 708, "The plain meaning of the Act is a legal or equitable liability to contribute *in the character of a partner*; a person who has not taken shares may have become bound in equity to the Company to take shares; a person who has by some device or contrivance got rid of his shares, may be made to take them again. These are instances of the equitable liability to which the Act refers." A debtor of the Company, or a *cestui que trust* of shares in the Company, or an officer of the Company who has misappropriated its assets, are not contributories and liable to pay money as such, *ibid*.

But promoters of a Company and persons who have transferred shares into the names of nominees have in several instances been held liable as contributories, see Buckley, 4th ed., 391, 392.

This section does not contain any provision for the exoneration of past members, such as is contained in sec. 61, *supra*, p. 53.

Power of
Court to
restrain
further
proceedings.

245. The Court may, at any time after the making of an application for winding-up an unregistered Company, and before making an order for winding-up the Company, upon the application of any creditor of the Company, restrain further proceedings in any suit or proceeding against any contributory of the Company, or against the Company, as hereinbefore provided, upon such terms as the Court thinks fit.

Sec. 201 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting "the making of an application for winding-up" instead of "the presentation of a petition for winding-up" in that section, and omitting the word "action" before "suit"; and sec. 215 of the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 84 of Act XIX. of 1857.

(i) See secs. 134, 241, *supra*, and sec. 248, *post*.

As to the effect of the word "proceeding" see *Couch, C. J., in Narayan Shamji v. Gujarat Trading Co.*, 3 Bom. H. C. O. C. J. 23.

Per Jessel, M. R., in Rudow v. Great Britain Life Assurance Society, 17 Ch. Div., 611, 612. "That 201st section [in the English Act] was necessary, because in the case of an unregistered Company a creditor might sue a contributory as well as the Company. The 85th section [section 134, *supra*] in terms applies only to a registered Company, and authorizes the making an order on the application of the Company, a

creditor, or a contributory. The 201st section does not empower the Court to make an order on the application of the Company, but on the application of a creditor only, and it restrains proceedings against the contributory or Company. The order to be made is for a different purpose, and on the application of a different person from the order mentioned in section 85, and standing alone, without the subsequent section, which I am going to mention, I think this section would still be held not to interfere with the application of the 85th section. But any question on that part of the Act is got rid of by the provisions of the 204th section [sec. 248, *infra*]. . . . Therefore it is quite plain that so far the 85th section is made applicable to an unregistered Company."

246. Where an order has been made for winding-up an unregistered Company, in addition to the provisions hereinbefore contained (i) in the case of Companies formed under this Act, it is hereby further provided that no suit shall be commenced or proceeded with against any contributory of the Company in respect of any debt of the Company, except with the leave of the Court and subject to such terms as the Court may impose.

Effect of
order for
winding-up
Company.

Sec. 202 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, adding the words "action, or other legal proceeding" after "suit"; and sec. 216 of the Indian Companies' Act X. of 1866.

Cf. sec. 72 of Act XIX. of 1857 as to which see *Narayan Shamji v. Gujarat Trading Co.*, 3 Bom. II. C. O. C. J., 23.

(i) See secs. 136, 242, *supra*, and sec. 248, *infra*.

247. If any unregistered Company has no power to sue and be sued in a common name, or if, for any reason, it appears expedient, the Court may, by the order made for winding-up such Company or by any subsequent order, direct that all such property, moveable and immoveable, including all interests, claims and rights in to and out of property, moveable and immoveable, and including actionable claims, as may belong to or be vested in the Company, or to or in any person or persons on trust for or on behalf of the Company, or any part of such property, is to vest in the official liquidator or official liquidators by his or their official name or names; and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, and the official liquidator or official liquidators may, in his or their official name or names, or in such name or names, and after giving such indemnity, as the Court directs, bring or defend any suits or other legal proceedings relating to any property vested in

Provision in
case of
unregistered
Company.

him or them, or any suits or other legal proceedings necessary to be brought or defended for the purposes of effectually winding-up the Company and recovering the property thereof.

Sec. 203 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting "moveable and immoveable" for "real and personal" and "actionable claims" for "things in action," and omitting the word "actions" before "suits" in that section; and sec. 217 of the Indian Companies' Act X. of 1866, substituting "actionable claims" for "things in action" in that section.

Provisions of
this Part of
Act cumulative.

248. The provisions made by this Part of this Act with respect to unregistered Companies shall be deemed to be made in addition to, and not in restriction of, any provisions hereinbefore contained(i) with respect to winding-up Companies by the Court.

The Court or official liquidator may, in addition to anything contained in this Part of this Act, exercise any powers or do any act in the case of unregistered Companies which might be exercised or done by it or him in winding-up Companies formed under this Act; but an unregistered Company shall not, except in the event of its being wound-up, be deemed to be a Company under this Act, and then only to the extent provided by this Part of this Act.

Sec. 204 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 218 of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See secs. 124—172 and 197—219, *supra*.

The direction in this section that "an unregistered Company shall not, except in the event of its being wound-up, be deemed to be a Company under this Act," is not intended to confine the application of the Act to a Company which has been actually ordered to be wound-up, but applies to a case where proceedings are pending for winding-up an unregistered Company. *Rudow v. Great Britain Mutual Life Assurance Society*, 17 Ch. Div., 601. See this case further referred to in the note to sec. 245, *supra*.

PART IX.

MISCELLANEOUS PROVISIONS.

In the English Companies' Act (25 and 26 Vic., c. 89), 1862, this Part commenced with section 205, which related to the repeal of Acts, and 206, which contained a saving clause with reference to such repeal. The Indian Act X. of 1866 also contained two sections, 219, 220, to a similar effect. See section 2 of this Act, *supra*.

249. No Company under this Act shall have power to buy its own shares. Company not to buy its own shares.

This section is new, and imposes a legislative prohibition upon that which in England may be done if the memorandum and articles of association clearly authorise it—see Buckley, 4th ed., pp. 37, 75, 418, 483.

This section goes further than the decision in *Zulueta's claim*, L. R. 5 Ch. Ap. 444, where *Giffard, L. J.*, held, that unless there was in plain terms, in the memorandum or articles of association, a direct authority to purchase a Company's own shares, it was clear in point of law that the Company could not do so. This decision is now the English rule on the subject. The American rule, however, is to the contrary. See Brice's *Ultra Vires*, 2nd ed., 175—177.

In *Jehangir Rustomji Mody v. Shamji Ladha*, 4 Bom. H. C. O. C. J., 185, it was held (i) that the purchase by the Directors of a joint stock Company, on behalf of the Company, of shares in other joint Companies, unless expressly authorized by the memorandum of association, was *ultra vires*; (ii) that a joint stock Company even though it be empowered by its memorandum of association to deal in shares of other Companies, is not thereby empowered to deal in its own shares; (iii) that a shareholder in a joint stock Company can maintain an action against the Directors of such Company to compel them to restore to the Company funds of the Company which they have employed in transactions they had no authority to enter into, without making the Company a party, but (iv) that a shareholder may by his own conduct lose his right to hold the Directors personally liable in respect of such dealings, and the result is the same whether he is beneficial owner of his shares or a trustee of them for others. See also *Liquidators of the Indian Peninsula, London and China Bank v. Scott*, 5 Bom. H. C. O. C. J., 167, where it was held that a claim against the Directors of a Joint Stock Company to make good funds of the Company expended by them on behalf of the Company in transactions which the Company by its articles of association was forbidden to engage in was provable under Act XXVIII. of 1865, between which and sec. 40 of the Indian Insolvent Act there is no difference in this respect.

In *IN RE Mercantile Credit and Financial Association*, ex parte *Dalvi*, it was held that the Company (which was registered under Act XIX. of 1857, and was unable by its articles of association to purchase its own shares) having, through its directors, as well by the act of purchase as by their subsequent conduct, treated themselves as the owners of the shares, could not be permitted to take advantage of their own neglect or that of their officers, in not registering the shares in the name of the Company, and that the name of the Company should be substituted as the holders of the shares.

Where a Company seeks a quotation for its shares on the London Stock Exchange, its regulations must prohibit the purchase of its own shares. See the Stock Exchange rule set out at p. 248 of *Palmer's Company Precedents*, 3rd ed.

250. Where, previously to the commencement of this Act, an order has been made for winding-up a Company under the Indian Companies' Act, 1866, or a resolution has been passed for winding-up a Company voluntarily, such Company shall be wound-up in the same manner and with the same incidents as if this Act were not passed; and, for the purposes Saving of existing proceedings for winding-up.

of such winding-up, the Indian Companies' Act, 1866, shall be deemed to remain in full force.

Sec. 207 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, and sec. 221 of the Indian Companies' Act X. of 1866, substituting "under the Indian Companies' Act, 1866," for "under any Acts or Act hereby repealed," and "the Indian Companies' Act, 1866," for "such repealed Acts or Act," in those sections respectively.

See the cases collected under this section, Buckley, 4th ed., 396.

"Where the law is altered while an action is pending, the law as it existed when the action was commenced must decide the rights of the parties; unless the legislature, by the language used, show a clear intention to vary the mutual relations of such parties." *The Gujarat Trading Co. v. Trikramji Velji*, 3 Bom. H. C. O. C. J., 45. See and consider *Hough v. Windus*, 12 Q. B. Div., 224.

Saving of conveyances.

251. Where, previously to the commencement of this Act, any conveyance, mortgage-deed or other instrument has been made in pursuance of the Indian Companies' Act, 1866, such instrument shall be of the same force as if this Act had not passed; and, for the purposes of such instrument, the Indian Companies' Act, 1866, shall be deemed to remain in full force.

Sec. 208 of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and sec. 222 of the Indian Companies' Act X. of 1866, substituting "in pursuance of the Indian Companies' Act, 1866," for "in pursuance of any Act hereby repealed," and "the Indian Companies' Act, 1866," for "such repealed Act," in those sections respectively.

Compulsory registration of certain Companies.

In the English Companies' Act (25 and 26 Vic., c. 89), 1862, there followed two sections, (209):—"Every Insurance Company completely registered under the Act passed in the eighth year of the reign of her present Majesty, chapter one hundred and ten, intituled 'An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies,' shall on or before the second day of November, one thousand eight hundred and sixty-two, and every other Company required by any Act hereby repealed to register under the said Joint Stock Companies' Acts, or one of such Acts, and which has not so registered, shall, on or before the expiration of the thirty-first day from the commencement of this Act, register itself as a Company under this Act, in manner and subject to the regulations hereinbefore contained, with this exception, that no Company completely registered under the said Act of the eighth year of the reign of her present Majesty shall be required to deliver to the Registrar a copy of its deed of settlement; and for the purpose of enabling such Insurance Companies as are mentioned in this section to register under this Act, this Act shall be deemed to come into operation immediately on the passing thereof; nevertheless the registration of such Companies shall not have any effect until the time of the commencement of this Act. No fees shall be charged in respect of the registration of any Company required to register under this section."

Penalty on Company not registering.

And sec. 210:—"If any Company required by the last section to register under this Act makes default in complying with the provisions thereof, then from and after the day upon which such Company is required

to register under this Act, until the day on which such Company is registered under this Act (which it is empowered to do at any time), the following consequences shall ensue; (that is to say), (1) The Company shall be incapable of suing either at law or in equity, but shall not be incapable of being made a defendant to a suit either at law or in equity; (2) No dividend shall be payable to any shareholder in such Company; (3) Each director or manager of the Company shall for each day during which the Company so being in default carries on business incur a penalty not exceeding five pounds, and such penalty may be recovered by any person, whether a shareholder or not in the Company, and be applied by him to his own use.

"Nevertheless, such default shall not render the Company so being in default illegal nor subject it to any penalty or disability, other than as specified in this section; and registration under this Act shall cancel any penalty or forfeiture, and put an end to any disability which any Company may have incurred under any Act hereby repealed by reason of its not having been registered under the said Joint Stock Companies' Acts, 1856, 1857, or one of them."

And in the Indian Companies' Act X. of 1866, there followed section 223, which was as follows:—"Every Company required by any Act hereby repealed to register under the said Acts or either of them, and which has not so registered, shall, on or before the expiration of the thirty-first day from the commencement of this Act, register itself as a Company under this Act, in manner and subject to the regulations hereinbefore contained. No fees shall be charged in respect of the registration of any Company required to register by this section." And sec. 224, which corresponded with sec. 210 of the English Act, set out above, substituting only the words "one hundred rupees," for "five pounds," and "the said Act No. XIX. of 1857," for "the said Joint Stock Companies' Acts, 1856, 1867, or one of them."

Compulsory
registration
of certain
Companies.

Penalty on
Company not
registering.

Sections corresponding to the ones in question are omitted from the present Act, being no longer necessary.

In the English Act follow two sections (211, 212), which give a temporary power for Companies to change their registered offices under a certificate from the Board of Trade, and contain certain restrictions on the issue of such certificate by the Board of Trade; and the English Act ends with the latter sec. (212). They were omitted from Act X. of 1866, as being likely to prove inoperative in India. Stokes, p. 89.

252. All offences under this Act may be tried by any Magistrate of the first Class, unless the period of imprisonment to which the offender is liable exceeds that which such officer is competent to award under the law for the time being in force in the place in which he is employed. When the period of imprisonment provided by this Act exceeds the period that may be awarded by such officer, the offender shall be committed for trial before the Court of Session.

Cognizance
of offences.

If any offence which by this Act is declared to be punishable by any penalty is committed by any person within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay, such offence shall be punishable upon summary conviction by any

Punishment
of offences
committed
within
Presidency
towns.

Presidency Magistrate of the place at which such Court is held.

The first paragraph corresponds with sec. 225 of the Indian Companies' Act X. of 1866, substituting "any Magistrate of the first class" for "any officer exercising the powers of a Magistrate" in that section. The second paragraph corresponds with sec. 226 of the same Act, substituting "High Courts of Judicature at Fort William, Madras, and Bombay," for "the High Court," and "any Presidency Magistrate" for "any Magistrate of Police" in that section; and cf. sec. 65 of the English Companies' Act (25 and 26 Vic., c. 89), 1862.

As to the appointment of District Magistrates and Magistrates of the first class, &c., see secs. 10 *et seqq.* of the Code of Criminal Procedure X. of 1862.

In the Indian Act X. of 1866 there followed sections: 227, which directed that penalties should be levied by distress and sale of the offender's moveable property; 228, which directed the procedure to be followed until return was made to the distress warrant: sec. 229 which directed the imprisonment of the offender if the distress was insufficient. Sections 225-229 of the Indian Companies' Act X. of 1866 corresponded, *verbatim*, with sections 46-50 of Act XV. of 1865, which prescribed the mode of enforcing penalties under that Act ("The Parsee Marriage and Divorce Act, 1866"). Chapter XVIII. secs. 386 *et seqq.* of the Criminal Procedure Code X. of 1882, contain provisions relating to the levying of fines, &c.

Power to
make orders
as to costs.

253. Subject to the provisions hereinbefore contained(i), the Court may, in any proceedings under this Act, make such order as to costs as it thinks fit.

This section is new.

(i) See secs. 58, 93, 121, 122, 158, 188, 210, *supra*.

Cf. Chapter XVIII., sections 218-222 of the Civil Procedure Code, XIV. of 1882, as to costs.

Power of
High Court
to make rules.

254. The High Court may from time to time make rules, consistent with this Act and with the Code of Civil Procedure, concerning the mode of proceeding to be had for winding-up a Company in such Court and in the Courts subordinate thereto, and for giving effect to the provisions hereinbefore contained(i) as to the reduction of the capital and the subdivision of the shares of a Company(ii).

Secs. 170-173 of the English Companies' Act (25 and 26 Vic., c. 89), 1862, empower the Lord Chancellor of Great Britain, the Court of Session in Scotland, the Vice-Warden of the Stannaries, and the Lord Chancellor of Ireland, to make rules respectively. The present section corresponds to some extent with sec. 189 of the Indian Companies' Act X. of 1866, which was as follows:—"The High Court may make such rules concerning the mode of proceeding to be

had for winding-up a Company in such Court and in the Court subordinate thereto, as may from time to time seem necessary, and as may be consistent with the other provisions of this Act and with the Code of Civil Procedure. But until such rules are made, the general practice of the Court, including the practice hitherto in use in winding-up Companies shall, so far as the same is applicable and not inconsistent with this Act, apply to all proceedings for winding-up a Company."

(i) See secs. 13-23, *supra*.

(ii) Secs. 24-25, *supra*.

No new rules under the present Act of 1882 have as yet been promulgated in India; it has therefore been thought desirable to publish the rules of the High Courts of Calcutta and Bombay at present in force: compared with the rules which have been published in England, and which may prove to be of assistance. See *post*.

255. In sections 1 and 18 of Act No. XXI. of Construction of 1860 (*for the registration of Literary, Scientific, and Charitable Societies*), the words "Registrar of Joint Stock Companies" shall be construed to mean Registrar of joint stock Companies under this Act or any Act for the time being in force. tion of
"Registrar of
Joint Stock
Companies"
in Act No.
XXI. of 1860.

Sec. 230 of the Indian Companies' Act X. of 1866, *verbatim*.

See Act XXI. of 1860, *Appendix, post*.

256. Save as provided in sections one hundred and fifty-two and one hundred and fifty-three, nothing in this Act shall be deemed to apply to the Bank of Bengal, the Bank of Madras, and the Bank of Bombay. Act not to
apply to
Bank of
Bengal,
Madras or
Bombay.

Sec. 231 of the Indian Companies' Act X. of 1866, substituting "sections one hundred and fifty-two and one hundred and fifty-three" for "section 125" in that Act.

The Banks in question were governed respectively by Act No. IV. of 1862 (*for regulating the Bank of Bengal*); Madras Act No. V. of 1862 (*for regulating the Bank of Madras*); and Bombay Act No. X. of 1863 (*for the re-incorporation and re-constitution of the Bank of Bombay*). There were no provisions for winding-up the two former Banks. Sec. 44 of Bombay Act No. X. of 1863 provides for the winding-up of the Bank of Bombay. See now the Presidency Banks Act XI. of 1876, as amended by Act V. of 1879, *post, Appendix*.

First Schedule.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

This table corresponds to table B of Act XIX. of 1857; and table A of the English Companies' Act, 1862, and the Indian Companies' Act (X. of 1866). The regulations contained in this table apply to Companies formed under this Act, and limited by shares, unless excluded, or except as modified by articles of association; see secs. 37 and 33, *supra*. This table A does not apply to Companies formed and registered under Act XIX. of 1857 or VII. of 1860, sec. 221, *supra*, nor to Companies registered under Part VII. of this Act, unless it be adopted by special resolution (sec. 240, cl. (a) *supra*.) By sec. 76, *supra*, any Company may by special resolution, alter any of the regulations in table A contained; and by sec. 95, *supra*, the Governor-General in Council may make alterations in it.

Shares(i).

(1) If several persons are registered as joint holders(ii) of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share. Joint holders' receipts.

Art. 1 of table A of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See sec. 44, *supra*; and art. 46, *infra*.

(ii) See Buckley, 4th ed., 182, 392, 400, and the cases there cited. Lindley on Partnership, 3rd ed., 686, 687.

(2) Every member shall, on payment of eight annas, or such less sum as the Company in general meeting may prescribe, be entitled to a certificate(i) under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon. Share certificate.

Art. 2 of table A of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting "eight annas" for "one shilling"; and art. 2 of table A of the Indian Companies' Act. X. of 1866, *verbatim*.

(i) See sec. 54, *supra*.

(3) If such certificate is worn out or lost, it may be renewed, on payment of eight annas, or such less Renewal of.

sum as the Company in general meeting may prescribe.

Art. 3 of table A of the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting "eight annas" for "one shilling"; and art. 3 of table A of the Indian Companies' Act X. of 1866, *verbatim*.

Calls on Shares.

Calls.

(4) The directors may from time to time make such calls upon the members(i) in respect of all monies unpaid on their shares as they think fit, provided that twenty-one days' notice(ii) at least is given of each call; and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.

Art. 4 of table A of the English Companies' Act (25 and 26 Vic., c. 89), 1862; and of the Indian Companies' Act X. of 1866, *verbatim*.

(i) See sec. 45, p. 35, *supra*, where "members" is defined.

(ii) See articles (95)—(97), *infra*.

See the note to this art. in Buckley, 4th ed., pp. 401 *et seqq.*

Quorum.

Where the articles of association of a Company provided that "the business of the Company should be conducted by not less than" a specified number of directors, the words were held imperative and not directory: consequently a call made or a forfeiture of share declared by less than the specified number of directors was invalid; *IN RE Alma Spinning Co., Bottomley's case*, 16 Ch. D., 681; 29 W. R. 133. Compare *York Tramways Co. v. Willows*, 8 Q. B. Div., 685, and *IN RE Scottish Petroleum Co.*, 23 Ch. Div., 413.

IN RE Phosphate of Lime Co., Austin's case, 24 L. T. 932, a call made at a meeting at which the necessary quorum of directors was not present, but confirmed when a quorum was present, was held good.

As to the nature of the liability of a contributory, see sec. 125, *supra*, and notes thereto, which also provides that in the event of his insolvency the estimated value of his liability to future calls as well as calls already made may be found against his estate. As to who are contributories in the case of death and in the case of insolvency, see secs. 126 and 127, *supra*, and as to the liability of members whose shares have been forfeited see art. (21) *infra*.

Enforcement of Court's orders for calls.

IN RE City of Glasgow Bank, 14 Ch. D., 628, an order for a call had been made in the winding-up of a Scotch Company by the Scotch Court of Session, and it being necessary to enforce the call against contributories resident in England, the order for that purpose was made an order of the Chancery Division in England.

The Courts in India treat a call order made by the Court of Chancery in England upon a contributory of a Company registered and being wound-up in England, as a foreign judgment, and will not, in an action to recover the amount of the call, inquire into the propriety of the defendant's being placed on the list of contributories, or of the call order or balance order itself, if the defendant has had notice of, and an opportunity in the Court of Chancery of opposing these proceedings, and making his defence, and if that Court had jurisdiction in the matter. *L. B. and M. Bank v. Hormasji Framji*, 8 Bom. H. C. O. C. J., 200

see further *L. B. and M. Bank v. Bhanji Zutani*, I. L. R. 2 Bom. 116;
L. B. and M. Bank v. Govind Ramchundra, I. L. R. 5 Bom. 223.

A liability to pay calls is a debt within the meaning of sec. 282 of the Indian Succession Act X. of 1865, *Asiatic Banking Corporation v. Amador Viegas*, 8 Bom. H. C. O. C. J. 20, from which case it would appear that an administrator who pays *such debts as he knows of, otherwise than equally and rateably as far as the assets of the deceased will extend* in accordance with that section, is personally liable for any loss occasioned to a creditor of the deceased by such improper distribution of assets; and in order to charge such administrator, the knowledge must be actual knowledge, as distinguished from constructive or imputable knowledge.

As to the liability of an insolvent to pay calls notwithstanding his discharge, see the note to sec. 125, *supra*, pp. 93, 94.

By art. 95, *infra*, the notice may be served by post. By art. No. 112 Limitation. of the second Schedule, First Division of the Limitation Act XV. of 1877 (*post*, Appendix) the period limited for a suit for a call by a registered Company is three years from the time when the call is payable.

(5) A call shall be deemed to have been made Date of call. at the time when the resolution of the directors authorizing such call was passed.

Art. 5 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(6) If the call payable in respect of any share Interest on calls in arrear. is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

Art. 6 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862, omitting the word "pounds" after "five"; and to the Indian Companies' Act X. of 1866, *verbatim*.

(7) The directors may, if they think fit, receive, Power to receive calls in advance. from any member willing to advance the same, all or any part of the monies due upon the shares held by him beyond the sums actually called for; and upon the monies so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Art. 7 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

Query, whether interest can be paid under this article irrespective of the profits made by the Company, see *Palmer's Company Precedents*, 3rd ed., p. 121.

Transfers of Shares(i).

(8) The instrument of transfer of any share in the Company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register-book in respect thereof.

Art. 8 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) See sec. 44 *supra*, p. 32, and note thereto. As to transfers by personal representatives of deceased members who are not themselves members, being of the same validity as if they were members, see sec. 46, *supra*, p. 40.

By sec. 223, *supra*, shares in Companies registered under Acts XIX. of 1857 and VII. of 1860 may be transferred in the manner in use before the passing of this Act, or in such other manner as such Companies may direct.

As to what constitutes readiness and willingness on the part of a vendor of shares for future delivery, see *Imperial Banking Co. v. Atmeram Madharji*, 2 Bom. H. C. O. C. J. 247; *Jewraj Megji v. Poulton*, *ibid.* 253; and *Imperial Trading Co. v. Pranjivandas Harjivandas*, *ibid.* 258, and *Parbhudas Pranjivandas v. Ramlal Bhagirath*, 3 Bom. H. C. O. C. J., 69. See these cases cited *supra*, pp. 33, 34.

Liability of transferor for neglecting to get transfer registered.

This article corresponds with sec. 18 of Act XIX. of 1857, which prescribed the form of transfer and directed that it should be executed both by the transferor and the transferee, and that the transferor should be deemed to remain a holder of such shares until the name of the transferee was entered in the register book in respect thereof; under which section it was held in *RE The East Indian Trading and Banking Co., Jannadas Savaklal's case*, 3 Bom. H. C. O. C. J. 113, that an allottee of shares in the Company who had transferred them privately to two of the directors, but had not executed the transfer deed which also had not been laid before the board of directors for their sanction as required by the articles of association, should be continued on the list of contributories; for the fact that he had sold his shares to one or two of the directors did not exonerate him from the duty of obeying the articles of association, and sec. 18 of Act XIX. of 1857; as although directors might by their conduct preclude themselves from objecting to the completeness of a transfer, yet the act of an individual director acting in his private capacity could not and ought not to bind the board, unless it had authorized or ratified his conduct. Compare *IN RE Mercantile Credit and Financial Association*, ex parte *Dalvi*, 3 Bom. H. C. O. C. J. 125 (cited *supra*, note to sec. 249,) and *IN RE Dronfield Silkstone Coal Co.*, 17 Ch. Div., 76.

Right of transferor to be indemnified by transferee.

Per *Lord Coleridge, C.J.* in *Kellock v. Enthoven*, L.R. 9 Q B. [Exch. Ch.] 248: "I apprehend the rule of law to be that, if there should be twenty mesne transferors between the first holder and the last holder, who are all liable because they have been holders of the shares within the year, if the Company choose to demand payment of any one of them, he would be bound to pay, and would have a right to come on his immediate transferee and say 'as between you and me, when I parted with the shares to you,

the implied contract was, that you would discharge in respect of them all liability that might arise during the time of your holding. This is a liability which arose during the time you held the shares, though the call was not made till after you had parted with them. You may have some further remedy against somebody else, but as between you and me that was the contract. I have had to pay, and you must repay me.' ”

Shares may be transferred even though the transferors know that the Company is on the eve of being wound-up voluntarily. IN RE *Taurine Co.*, 25 Ch. Div. 118, where *Chappell's case*, L. R. 6 Ch. 902, *Allin's case*, L. R. 16 Eq. 449, and *Tennent v. City of Glasgow Bank*, 4 Ap. Ca. 615, were distinguished. See per *Fry, L. J.*, p. 142.

In IN RE *Taurine Co.*, 25 Ch. Div., 118, it was further held that a committee of the board of directors need not consist of more than one person. Also that in the absence of express evidence it was not to be inferred that the transfers had not been executed by the transferees; and that even if they had not been so executed, they were not a nullity but only irregular, and having been acted upon and treated as valid they could not be impeached.

“Committee.”
No inference that transferees had not executed transfers.

See further for the cases in which irregularities in transfers were held to be unimportant, *Buckley*, 4th ed., 409. Irregularities.

If a debtor delivers to his creditor a blank transfer by way of security the creditor is not thereby enabled to delegate to another person authority to fill it up for purposes foreign to the original contract. *France v. Clark*, 26 Ch. Div., 257; (referred to *supra*, p. 40) where *ex parte Sargent*, L. R. 17 Eq. 273, was observed upon.

Depository of blank transfer.

For the stamp necessary on transfer deeds see Appendix, *post*.

Stamp.

(9) Shares in the Company shall be transferred in the following form :—

I, *A B*, of _____, in consideration of the sum of rupees _____ paid to me by *C D* of _____, do hereby transfer to the said *C D* the share (or shares) numbered _____ standing in my name in the books of the _____ Company, to hold unto the said *C D*, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; and I, the said *C D*, do hereby agree to take the said share (or shares) subject to the same conditions. As witness our hands, the _____ day of _____

Art. 9 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

Where the first and last numbers only of a series are given it may be reasonably concluded that the numbers not given were intermediate between those given; per *Sargent, J.*, *Blaney's case*, 3 Bom. H. C. O. C. J., 104, 111, *supra*, p. 42.

(10) The Company may decline to register any transfer of shares made by a member who is indebted to them.

Transfer by indebted member.

Art. 10 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) "Indebted" i.e. on any account whatever; *ex parte Stringer*, 9 Q. B. Div., 436.

Transmission.

This article does not apply to persons claiming shares *by transmission* under art. (13) *post*. Therefore a Company which has adopted table A as its articles of association cannot refuse to register the name of a trustee in bankruptcy of a shareholder on the ground that the shareholder is indebted to the Company. *IN RE Bentham Mills Spinning Co.*, 11 Ch. Div., 900. See art. (13) *post*.

A trustee in liquidation of a shareholder who has transferred his shares by way of mortgage, but whose transfer has not been registered on the ground of the shareholder being indebted to the Company, has a right to be placed on the register of shareholders, subject, as to the shares, to all the equities that may subsist therein. *Ex parte Harrison*, *IN RE Cannock and Rugeley Colliery Co.*, 26 Ch. D., 522.

Company's lien upon shares held in trust.

As to the lien of a Company under its articles upon the shares of a shareholder who was a trustee, having priority over the title of the *cestui que trust*, see *New London and Brazilian Bank v. Brocklebank*, 21 Ch. Div., 302.

As to what provisions in the deed of settlement of a banking Company do *not* constitute a charge or lien on shares for a debt due from the holder of them, see *IN RE Dunlop; Dunlop v. Dunlop*, 21 Ch. Div., 583, per *Chitty J.*, p. 589, "The mere right on the part of the bankers to say that the shares shall not be parted with does not create any charge on the shares."

Sec. 17 of Act IX. of 1876, which entitles the Bank of Bengal to refuse to register the transfer of shares until payment of any debts due by the person in whose name the shares stand, refers only to debts which are presently payable, therefore where R. was indebted to the bank, and gave bills as security therefor, it was held that the bank could not be entitled to refuse, under sec. 17, to register a transfer by R. of his shares during the currency of the bills, *Muthoormohun Roy v. Bank of Bengal*, I. L. R. 3 Calc. 392.

See Buckley, 4th ed. p. 413, note to art. 10, on this point and the cases there referred to.

The Court will not interfere unless the directors of the Company exercise their power of declining to register a transfer capriciously or wantonly; if acting *boni fide* they will not be compelled to give their reasons; *ex parte Penney*, L. R. 8 Ch., 446.

Closing transfer books.

(11) The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year(i).

Art. 11 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) See sec. 74, *supra*, as to general meeting of the Company.

See *Muthoormohun Roy v. Bank of Bengal*, I. L. R. 3 Calc. 392, as to right of the Bank of Bengal to refuse to register transfers when the transfer books are closed under the powers given by sec. 21 of Act IX. of 1876; cited *supra*, p. 48, note to sec. 56.

Transmission of Shares.

(12) The executors or administrators of a deceased member shall be the only persons recognized by the Company as having any title to his shares. Shares devolving by death.

Art. 12 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

By sec. 126, *supra*, personal representatives, heirs and devisees of a deceased contributory are liable as contributories in respect of his estate, and upon their default in payment of the monies ordered by sec. 154, *supra*, the estate of the deceased contributory may be administered.

By sec. 148, *supra*, it is provided that in settling the list of contributories the Court shall distinguish between contributories in their own right and contributories as being representatives of others. See also sec. 46, *supra*, as to transfers by personal representatives.

"The executor bears a representative character, and if he simply sends the probate in to the Company to be noted, so that his title may be recorded and recognised, this may be done without making him personally liable." Buckley, 4th ed. 415, citing *Buchan's case*, 4 Ap. Ca. 549, 538.

Executors of the will (which had been proved in India) of a creditor domiciled in India, of a bank whose chief office was in England, but whose principal business was in India, and which was ordered to be wound-up in England, where the Indian assets were remitted, were held entitled to have a dividend remitted to them in India only on their producing a properly stamped English probate. *IN RE Commercial Bank Corporation of India and the East, Fernandez's Executors' case*, L. R. 5 Ch. Ap. 314.

As regards the exoneration of a specific legatee's stock in a joint stock Company in respect of calls see sec. 157 of the Indian Succession Act X. of 1865. Henderson, pp. 186, 189. See the section set out *post*, Appendix.

As to executors' election to be registered see art. (13) *post*, and as to their election to transfer see arts. (14)–(16) *post*.

(13) Any person becoming entitled to a share in consequence of the death(i), bankruptcy(ii) or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may, from time to time, be required by the Company. Persons entitled by death, bankruptcy, insolvency or marriage.

Art. 13 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) Sec. 126, *supra*.

(ii) Sec. 125, 127, *supra*, and notes thereto.

The words "in consequence of the marriage of any female member" ought, it should seem, if the section corresponding to sec. 78 of the English Act, *supra*, note to sec. 127, is omitted, also to have been omitted from this article.

"Death," see art. 12 and note thereto, *supra*.

"Bankruptcy or insolvency," see Art. 10 and note thereto, *supra*.

By sec. 50 (3) of the Bankruptcy Act (46 and 47 Vic., c. 52), 1883, when any part of the property of the bankrupt consists of shares transferable in the books of any Company, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

(14) Any person who has become entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share.

Art. 14 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

"In consequence of the marriage," &c., see note to article (13) *supra*.

(15) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

Art. 15 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

In India "the official assignee cannot be compelled to take upon himself the burden of an onerous undertaking." *Bayley, J., in Baba Sahab Damaskar's case*, 8 Bom. H. C. O. C. J., 117. See *supra*, p. 94.

In England by sec. 22 of the Bankruptcy Act (32 and 33 Vic., c. 71), 1869, the trustee in bankruptcy has the absolute right to transfer shares, &c., and by sec. 23 of that Act he may disclaim onerous property which includes shares, see notes to sec. 125 and 127, *supra*. See secs. 50 (3) and sec. 55 of the English Bankruptcy Act (46 and 47 Vic., c. 52), 1883. See the note to this art., Buckley, 4th ed., 416.

Evidence of
title.

(16) The instrument of transfer shall be presented to the Company, together with such evidence as the directors may require to prove the title of the transferee [? transferor], and thereupon the Company shall register the transferee as a member.

Art. 16 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866. The first word "transferee" which occurs both in this and the article in the Indian Act of 1866, is apparently a mistake for "transferor" as in the corresponding articles in the English Act of 1862.

"The utmost caution ought to be used in regard to the registration of transfers. It is very common to give notice to the transferor of the presentation of the transfer before it is registered." *Palmer's Company Precedents*, 3rd ed., p. 126, citing *IN RE Bahia &c. Co.*, L. R. 3 Q. B. 584, where the precedent has the word "transferor."

Forfeiture of Shares.

(17) If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter, during such time as the call remains unpaid, serve a notice(i) on him requiring him to pay such call together with interest(ii) and any expenses that may have accrued by reason of such non-payment. Forfeiture of shares.

Art. 17 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) See arts. (95)—(97), *post*.

(ii) See art. (6), *supra*.

Notice of forfeiture of shares for non-payment of calls given to the original allottees of the shares was not sufficient to constitute a legal forfeiture when those allottees had parted with their shares to the plaintiffs, the owners of the shares, *Oriental Financial Association v. The Mercantile Credit Association*, 3 Bom. H. C. O. C. J., 1.

(18) The notice shall name a further day on or before which such call and all interest and expenses that have accrued by reason of such non-payment are to be paid. It shall also name the place where payment is to be made, the place so named being either the registered office of the Company or some other place at which calls of the Company are usually made payable. The notice shall also state that, in the event of non-payment, at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited. Notice.

Art. 18 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(19) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest and expenses due in respect thereof has been made, be forfeited by a resolution of the directors to that effect. Forfeiture of Shares.

Art. 19 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

“Provisions in the articles conferring upon the directors under particular circumstances the power of forfeiting shares are usual, and, if duly and *bonâ fide* called into operation, perfectly legal.” Buckley, 4th ed., 417.

"A shareholder can only cease to be a shareholder in manner authorised by the Act, and by the regulations of the Company; and, if the articles do not authorize the forfeiture of shares, neither the directors, nor the Company in general meeting, can make a valid declaration of forfeiture." *Ibid.*

But the power of forfeiture is to be treated as *strictissimi juris*, and any irregularity in the procedure will invalidate the forfeiture. *Hart v. Clark*, 6 H. L. Ca. 633; *Garden Gully Co. v. McLister*, 1 Ap. Ca. 39; *Johnson v. Lyttles' Iron Agency*, 5 Ch. Div., 687; *Goulton v. London Architectural Co.*, W. N. 1877, 141.

Where the articles of association provided that the business of the Company should be conducted by not less than "a specified number of directors" the words were held imperative and not merely directory; and consequently a call made or a forfeiture of shares declared by less than the specified number of directors was invalid. *IN RE Alma Spinning Co.*, *Bottomley's case*, 16 Ch. D., 681.

Lying by for more than six years will prevent a plaintiff from successfully asserting his claim as a partner in a cost-book mine, even though his shares may not have been regularly forfeited, *Rule v. Jewell*, 18 Ch. D., 660, and as to acquiescence generally, see Buckley, 4th ed., 425.

As to a corporation or Company having as an incident to its existence the same power of compromising claims against it as an individual has, and as to a cancellation of shares in pursuance of such compromise being valid when the dispute was whether the shares in question had been legally issued, see *IN RE Norwich Provident Insurance Society*, *Bath's case*, 8 Ch. Div., 334. See Buckley, 4th ed., 428, and the cases there cited.

As to the liability as a contributory of a shareholder whose shares have been forfeited, see *supra*, p. 55.

For the form of an injunction restraining a forfeiture of shares and of an order rectifying the register when the forfeiture has been invalid, see *Palmer's Company Precedents*, 3rd ed., pp. 394, 401.

Forfeited
shares to be
property of
Company.

(20) Any share so forfeited shall be deemed to be the property of the Company, and may be disposed of in such manner as the Company in general meeting thinks fit.

Art. 20 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) Arts. (29)—(43) *post*.

Calls owing
on forfeited
shares.

(21) Any member whose shares have been forfeited shall notwithstanding be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture.

Art. 21 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

See the note to this article, Buckley, 4th ed., 430.

Title to
forfeited
shares.

(22) A solemn declaration in writing made before a Magistrate, that the call in respect of a share was made, and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of

the directors to that effect, shall be sufficient evidence of the facts therein stated as against all persons entitled to such share, and such declaration and the receipt of the Company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to the purchaser, and thereupon he shall be deemed the holder of such share, discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Art. 22 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting "a solemn declaration in writing, made before a Magistrate," for "a statutory declaration in writing"; and art. 22 of table A to the Indian Companies' Act. X. of 1866.

Conversion of Shares into Stock.

(23) The directors may with the sanction of the Company previously given in general meeting(i), convert any paid-up shares into stock(ii).

Conversion into stock.

Art. 23 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) Arts. (29)–(43) *post*.

(ii) See secs. 12, 30, 31, and 32, *supra*.

(24) When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein or any part of such interest, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the Company may be transferred, or as near thereto as circumstances admit.

Transfer of stock.

Art. 24 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) See sec. 44, *supra*, and arts. (8)–(11) *supra*, and secs. 30-35, *supra*, as to share-warrants to bearer.

See also sec. 52, *supra*.

(25) The several holders of stock shall be entitled to participate in the dividends and profits of the Company according to the amount of their respective interests in such stock; and such interests

Stockholder's dividends and votes.

shall, in proportion to the amount thereof, confer on the holders thereof, respectively, the same privileges and advantages for the purpose of voting at meetings of the Company, and for other purposes as would have been conferred by shares of equal amount in the capital of the Company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the Company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

Art. 25 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

See sec. 52, *supra*.

See *Morrice v. Aylmer*, L. R. 10 Ch. 148; 7 H. L. 717, for the resemblances and differences between shares and stock.

Increase in Capital(i).

Issue of new shares.

(26) The directors may, with the sanction of a special resolution(ii) of the Company previously given in general meeting, increase its capital by the issue of new shares; such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the Company in general meeting(iii) directs, or, if no direction is given, as the directors think expedient.

Art. 26 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) See secs. 12, 57, *supra*.

(ii) See sec. 77, *supra*.

(iii) Arts. (29) (43), *post*.

As to the issue of new shares at a discount when so authorized by the articles of association, see *IN RE Ince Hall Colliery Co.*, 23 Ch. D., 545, (note) see *supra*, p. 23.

New shares to be offered to members.

(27) Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice(i) specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined;

and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the Company.

Art. 27 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) Arts. (95)—(97). *post*.

Where the articles of association of the Company provided "that all additional capital which should be raised for the purposes of the Company should be raised in shares numbered progressively, and either in continuation of the numbers of the shares of the previous Capital of the Company or otherwise, and should be divided into shares of such amounts as would allow of the whole amount of such additional capital being apportioned among the existing shareholders rateably, and in proportion to their respective shares, in the existing capital of the Company; and that the existing shareholders for the time being should have the option of taking and subscribing for the shares in such additional capital rateably, and in proportion aforesaid"; it was held that the new shares should be offered to the shareholders in proportion to the shares each of them held, and a reasonable opportunity offered to them of exercising the right of taking them; and also that the above clause of the articles of association of the Company was imperative and not merely directory, and a deviation from it could not be made, unless with the assent of every shareholder. *Eastern Financial Association v. Pestonji Cursetji Shroff*, 3 Bom. H. C. O. C. J. 9.

(28) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions, with reference to the payment of calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

Art. 28 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

General Meetings.

(29) The first general meeting shall be held at such time, not being more than six months after the registration of the Company, and at such place, as the directors may determine.

Art. 29 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) See secs. 74, 78, 92, *supra*.

(ii) See sec. 75, *supra*.

One shareholder does not make a meeting—*Sharp v. Dawes*, 2 Q. B. Div., 26.

Subsequent
general
meetings.

(30) Subsequent general meetings shall be held once at the least in every year, at such time and place as may be prescribed by the Company in general meeting; and, if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

Art. 30 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

See sec. 183, *supra*, as to liquidators in voluntary winding-up summoning a general meeting at the end of each year after the commencement of the winding-up if it continues for more than a year.

Extraordi-
nary general
meetings.

(31) The abovementioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

Art. 31 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

Requisition
for extra-
ordinary
general
meeting.

(32) The directors may, whenever they think fit, and they shall, upon a requisition made in writing by not less than one-fifth in number of the members of the Company, convene an extraordinary general meeting.

Art. 32 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

Form of
requisition.

(33) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

Art. 33 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

If directors
do not,
requisition-
ists may
convene
extraordinary
general
meeting.

(34) Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

Art. 34 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

By sec. 78, *supra*, in default of any regulations as to the persons to summon meetings, five members shall be competent to summon the same.

Directors ought not to act in matters provided for by the articles of association without first calling a general meeting to decide upon such matters, see per *Sir C. Sargent, J.*, in *Nusserwanjee v. Gordon*, 1 L. R., 6 Bom. 266-285. See this case more fully cited *post*, note to article 55.

As on the one hand the Court will not interfere with the internal management of a Company, or direct a meeting to be summoned for the general purposes of the Company when the directors or the requisite number of shareholders do not think proper to summon one (see *Buckley*, 4th ed., 433, and cases there cited), so, on the other hand, it must be a very strong case indeed which will justify the Court in restraining a meeting of shareholders. The Court has constantly and consistently refused to interfere on behalf of shareholders, until they have done the best they can to set right the matters of which they complain, by calling general meetings. Per *Lindley, L. J.*, in *Isle of Wight Ry. Co. v. Tahourdin*, 25 Ch. Div., at p. 333, and see *Foss v. Hurbottle*, 2 Hare, 461.

Court will not interfere in internal management of Companies.

Proceedings at General Meeting.

(35) Seven days' notice⁽ⁱ⁾ at the least, specifying the place, the day, and the hour of meeting, and in case of special business⁽ⁱⁱ⁾ the general nature of such business, shall be given to the members in manner hereinafter mentioned⁽ⁱⁱⁱ⁾, or in such other manner, if any, as may be prescribed by the Company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

Notice of meetings.

Art. 35 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) Sec. 78, *supra*.

(ii) Art. (36), *post*.

(iii) Arts. (95)–(97), *post*.

See the note to sec. 77 *supra*, pp. 72, 73, and the cases there cited.

When the directors of a Company, by whose articles of association the directors were prohibited from investing or expending any money of the Company in the purchase of shares of the Company, gave notice to the shareholders of an extraordinary general meeting at which a special resolution was to be proposed that, "notwithstanding anything contained in the articles of association," the directors should be authorized, and thereby directed, to do what was equivalent to expending money of the Company in the purchase of fully paid-up vendor's shares in the Company; and the directors, at the same time, issued a circular to the shareholders recommending the adoption of the resolution; and the resolution was carried at the meeting and afterwards duly confirmed at another extraordinary general meeting; it was held (per *Pearson, J.*) that the notice was a sufficient intimation to the shareholders of what it was proposed to do, and that the resolution was valid and operative, as being in effect a rescission of the prohibitive article so far as necessary, and an instruction to the directors to carry out the proposed scheme by virtue of their new powers. *Taylor v. The Pilsen Joel and General Electric Light Co.*, 53 L. J., Ch. D. N. S. 856; 27 Ch. D., 268, (where the head-note is incomplete). In this case *Campbell's case*, L. R. 9 Ch. 1, was

followed and *Imperial Hydropathic Hotel Co. v. Hampson* was discussed and explained upon the ground that in that case in the resolution removing the directors no intention whatever was to be found of altering the regulations (53 L. J., Ch. D., 359; 27 Ch. D., 276.)

In *Isle of Wight Ry. Co. v. Tahourdin*, 25 Ch. Div., 320, [decided under the Companies' Clauses Consolidation Act, 8 & 9 Vic., c. 16], a notice of a proposal to remove "any of the directors" was held to be sufficiently distinct.

Special
business.

(36) All business shall be deemed special that is transacted at an extraordinary⁽ⁱ⁾ meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, and the consideration of the accounts, balance sheets and the ordinary report of the directors.

Art. 36 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) See art. 31, *supra*.

Quorum
necessary.

(37) No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business. Such quorum shall be ascertained as follows, that is to say:—if the persons who have taken shares in the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty.

Art. 37 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) As to a quorum of directors, see art. (66), *post*.

Adjournment
if quorum
not present.

(38) If, within one hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the next week, at the same time and place; and if, at such adjourned meeting, a quorum is not present, it shall be adjourned *sine die*.

Art. 38 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(39) The chairman (if any) of the board of directors shall preside as chairman⁽ⁱ⁾ at every general meeting of the Company. Chairman of meeting.

Art. 39 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) See sec. 78, *supra*.

(40) If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman⁽ⁱ⁾. Members may choose chairman.

Art. 40 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) See sec. 78, *supra*.

(41) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. Adjournment.

Art. 41 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(42) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings⁽ⁱ⁾ of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution. Resolution how carried.

Art. 42 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) See sec. 92, *supra*.

A poll need not be openly made by the five members; it is enough if the demand is made informally and privately and the fact of the demand is stated to the meeting by the chairman, *IN RE Phoenix Electric Light Co.*, 48 L. T. 260; 31 W. R. (Eng.) 398.

A proxy authorising a person to vote does not authorise him to demand a poll. *IN RE Haven Gold Mining Co.*, 20 Ch. D., 151, 157.

There is no law that at a meeting of shareholders a motion cannot be put unless it is seconded, and it appears that a question may be put by the chairman without its being proposed or seconded.

IN RE *Horbury Bridge Co.*, 11 Ch. Div., 117, 118. See this case referred to *supra*, p. 72.

Chairman's
powers.

The chairman of a general meeting has *prima facie* authority to decide all incidental questions which arise at such meeting, and necessarily require decision at the time, and the entry by him in the minute book of the result of a poll, or of his decision of all such questions, although not conclusive, is *prima facie* evidence of that result, or of the correctness of that decision, and the *onus* of displacing that evidence is thrown on those who impeach the entry. Where the chairman at a confirmation meeting disallowed certain votes which had been given against the confirmation of a resolution passed at the first meeting appointing a liquidator, the effect of such disallowance being to confirm such resolution, and he made an entry in the minute book that such resolution had been confirmed, the Court, in the absence of evidence that the votes were improperly disallowed, declined to question his decision. But having regard to the unsatisfactory state of the evidence, the Court in the interest of all parties by its own order confirmed the appointment of the liquidator. IN RE *Indian Zoedone Co.*, 26 Ch. Div., 70.

Poll.

(43) If a poll is demanded by five or more members, it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the Company in general meeting. In the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

Art. 43 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

See note to art. (42), *supra*.

The right to demand a poll is a common law right and exists, unless it is specially excluded or restricted, see *Reg. v. Wimbledon Local Board*, 8 Q. B. Div., 459; 30 W. R. 402; 46 L. T. 47. Per Brett, L. J. (8 Q. B. Div., 464). "The taking of a poll is a mere enlargement of the meeting at which it was demanded." Per Cotton, L. J. (465), "A poll is not a new meeting, but it is a mode of ascertaining the sense of the meeting which is continued for that purpose, and further, where a qualification exists, it is a mode of ascertaining whether the persons tendering their votes do in fact possess that qualification."

Votes of Members.

Votes.

(44) Every member shall have one vote for every share up to ten. He shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.(i).

Art. 44 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) See sec. 78, *supra*.

With regard to the right of a shareholder to transfer his shares to nominees, so as to secure to himself the maximum of voting power; and as to the rules which regulate the right of a minority to sue and to use the Company's name for that purpose, See Buckley, 4th ed., 436-437.

Where two shareholders in a Company commenced an action against the managing director of the Company and two other directors, and the Company, for the purpose *inter alia* of setting aside for fraud a sale by the managing directors to the promoters which was adopted by the Company, and it appeared that the acts complained of were acts which a majority could not sanction, so as to bind the minority, and there were allegations in the statement of claim showing that it was impossible to get the Company to impeach those acts, a demurrer on the ground that the Company ought to have been plaintiff was held not sustainable, *Mason v. Harris*, 11 Ch. Div., 97, per *James, L. J.* at p. 109, "No Judge has ever laid down more strongly than I the rule that in general in these cases the Company must be the plaintiff. But an exception to that rule was established by *Atwood v. Merryweather* (L. R. 5 Eq. 464 n), and this case is within it." But where an action was brought by a shareholder in the name of the Company against the directors, alleging misapplication of the funds of the Company, and a large majority of the shareholders had passed a resolution that the name of the Company should not be used in the action, the name of the Company was struck out as plaintiff, but liberty was given to amend the writ by adding the Company as defendant, *Silber Light Co. v. Silber*, 12 Ch. D., 717.

Strangers to a Company in winding-up, i.e., persons who were neither creditors nor contributories and who had no charge on the assets, have no right to use the Company's name for the purpose of a suit against the directors for misfeasance. *Cape Breton Co. v. Ferm*, 17 Ch. Div., 198. Leave to sue in Company's name in winding-up.

(45) If any member is a lunatic or idiot, he may vote by his committee or other legal curator; and if any member is a minor, he may vote by his guardian, or any one of his guardians if more than one. Vote of lunatic or minor.

Art. 45 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862, is as follows:—

"If any member is a lunatic or idiot he may vote by his committee, *curator bonis*, or other legal curator"; art. 45 of table A to the Indian Companies' Act X. of 1866, corresponds *verbatim* with the present article.

Proceedings in Lunacy in the Courts of Judicature established by Royal Charter are regulated by Act XXXIV. of 1858; and Act XXXV. of 1858 provides for the care of the estates of lunatics not subject to the jurisdiction of these Courts.

(46) If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same. Votes of joint holders.

Art. 46 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(47) No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer, at any meeting held after the expiration of Vote of member in arrear and of transferee.

three months from the registration of the Company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

Art. 47 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

By sec. 132, *supra*, a contributory is not qualified to present a winding-up petition unless the members of the Company are reduced in number to less than seven, or unless the shares in respect of which he is a contributory were originally allotted to him, or have been held by him and registered in his name for a period of at least *six months* during the eighteen months previous to the commencement of the winding-up, or have devolved upon him through the death of a former holder.

Proxies.

(48) Votes may be given either personally or by proxy.

Art. 48 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

Where by one of the articles of association of a Company it was provided that "if a poll is demanded by shareholders qualified to vote and holding in the aggregate 2000 shares or more, it shall be taken in such manner as the chairman shall direct, and the result of such poll shall be deemed to be the resolution of the Company in general meeting;" and by another article that "votes may be given either personally or by proxy;" it was held that a holder of proxies was not a person holding shares within the meaning of the former article. *The Queen v. Government Stock Investment Co.*, 3 Q. B. D., 442. Per *Cockburn, C. J.*, at p. 445. "I think no one can be said to be "holding" shares within the meaning of this article when, instead of holding shares, he is holding the proxies of those who do hold them."

Instrument appointing proxy to be in writing and attested.

(49) The instrument appointing a proxy shall be in writing, under the hand of the appointer, or, if such appointer is a corporation, under their common seal, and shall be attested by one or more witness or witnesses. No person shall be appointed a proxy who is not a member of the Company.

Art. 49 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

This article is imperative, not merely directory, and unattested proxies will be rejected. See *Harben v. Phillips*, 23 Ch. Div., 14.

Proxy paper in blank.

In *ex parte Lancaster* IN RE *Lancaster* 5 Ch. Div., 911, the Court of Appeal (in a bankruptcy appeal) held that a proxy paper signed by a creditor, having the name of the proxy in blank, might be filled up by the person to whom the creditor had entrusted it, with a verbal authority to use it, and that when so filled up it was valid.

(50) The instrument appointing a proxy shall be deposited at the registered office of the Company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

Instrument appointing proxy to be deposited at Company's registered office.

Art. 50 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(51) Any instrument appointing a proxy shall be in the following form :—

Form of instrument appointing a proxy.

Company, Limited.
, of

I,
, being a member of the Company, Limited, and entitled to vote or votes, hereby appoint , of , as my proxy, to vote for me and on my behalf at the (ordinary or extraordinary, as the case may be) general meeting of the Company to be held on the day of , and at any adjournment thereof (or at any meeting of the Company that may be held in the year). As witness my hand, this day of
Signed by the said in the presence of

Art. 51 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

For the provisions of the Stamp Act I. of 1879 relating to proxies, see *post*, Appendix.

Directors.

(52) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

First directors.

Art. 52 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(53) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

Subscribers of memorandum directors until directors appointed.

Art. 53 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act, X. of 1866, *verbatim*.

As to the retirement of the first directors at the first ordinary meeting, see art. (58), *post*.

See Buckley, 4th ed., 441, note to this article, and *IN RE Esparto Trading Co.*, 12 Ch. D., 191 (cited *supra*, p. 36) with reference to the liability of subscribers to the memorandum of association, under articles imposing a qualification upon directors.

Remuneration of directors.

(54) The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the Company in general meeting.

Art. 54 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

In *Orton v. Cleveland Fire Brick Co.*, 3 H. and C. 868, an action was held maintainable against the Company, which was registered under 19 and 20 Vic., c. 47, upon an agreement contained in its articles to pay to each of its directors a certain remuneration.

As to the position of the directors of a Company as regards their remuneration, see Mr. Buckley's note to the above article, 4th ed., p. 412.

Powers of Directors.

Management by directors.

(55) The business of the Company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the Company(i), and may exercise all such powers of the Company as are not by the foregoing Act, or by these articles, required to be exercised by the Company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing Act, and to such regulations, being not inconsistent with the aforesaid regulations, or provisions, as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Art. 55 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) See and consider *Spiller v. Paris Skating Rink Co.*, 7 Ch. D., 368, where it was held that a Company can ratify a contract which was made by its promoters when the Company was not in existence, but see as to this case, *IN RE Empress Engineering Co.*, 16 Ch. Div., 125, where *James, L. J.* at p. 130, says, "notwithstanding what was said by *V. C. Malins* in *Spiller v. Paris Skating Rink Co.*, it appears to me that it is settled, both in the Courts of Law and by us in the Court of Appeal in the case of *IN RE Hereford and South Wales Waggon and Engineering Co.* (2 Ch. Div., 621) that a Company cannot ratify a contract made on its behalf before it came into existence—cannot ratify a nullity." The case at law there referred to is *Melhado v. Porto Allegre &c. Ry. Co.*, L.

R., 9 C. P., 503, and see *Eley v. Positive Assurance Society*, 1 Ex. D., 20, affd. *ibid.* 88. See further *IN RE Rotherham Alum and Chemical Co.*, 25 Ch. Div., 103. See also *The Guzerat S. and W. Co v Girdharlal Dalpatram*, 1 L. R., 5 Bom., 425 where it was held, *inter alia*, that the agreement (if any) entered into by the defendant was not and could not have been with the Company, for the Company was not in existence, see this case referred to, *supra*, p. 35.

"But there may be a good equitable claim so far as the Company has derived benefit." Buckley, 4th ed., 443, see *IN RE Empress Engineering Co.*, 16 Ch. Div., 125.

(ii) Cf. sec. 92, *supra*, and art. 71, *post*.

As to the position and powers of directors, &c., see the note to the following article.

(56) The continuing directors may act notwithstanding any vacancy in their body. Vacancies in directors.

Art. 56 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

It is proposed in this note to deal shortly with

I. The position of directors :

(A) As agents of the Company : (i) their powers to bind the Company and (ii) their liabilities as such agents.

(B). As trustees, their powers and liabilities as such.

II. The duties of directors.

III. The removal of directors and other matters :

I. (A). *Directors of the Company as Agents.*

(i) Their power to bind the Company.

The position of directors is that of agents of the Company; the Company, having no person, can only act through its directors; and by the acts of its directors a Company is bound, provided those acts are within the limits of their real or apparent authority, and provided the person dealing with them has had no notice of the irregularity (if any) of their proceedings. But the Company are not bound by any acts which the directors have done for objects which the Company has no power to entertain. See Buckley, 4th ed., 443, and Lindley, 3rd ed., 256, and the cases there cited.

Where the defendant Company, as stated in its memorandum of association was established, among other objects, "for the purchase and sale of debentures, stocks, shares of joint stock Companies, (including its own shares) and other securities, the making loans and advances on such securities as the directors might think fit," it was held that contracts for the re-purchase of its own shares by the directors of the defendant Company from the plaintiff Company (which had formerly purchased the shares from defendant) was within the scope of the authority of directors of the defendant Company and the latter Company was bound by them. *Oriental Financial Association v. Mercantile Credit*, 3 Bom., H. C. O. C. J., 1. See this case cited *supra*, under article 17.

Although directors may not bind a Company by bills of exchange or notes, except such as show on their face that they have been made, accepted or endorsed, as the case may be, by or on behalf or on account of the Company, or such as exclude the inference that they have been made, &c., by or on behalf or on account of any other person (*IN RE The New Fleming S and W. Co*, 1 L. R. 3 Bom. 439, affirmed 1 L. R. 4 Bom. 275), yet a Company, which by its directors acting within their authority has sold a bill as a bill on which it is liable, but which afterwards turns out to be one upon which it is not liable, may be held liable upon the

Bills of
Exchange, &c.
drawn by
directors.

ground that it had held out its directors as having an authority to bind the Company by the bill in the form in question, and they not having such authority, the Company was guilty of mis-representation within sections (18 and 19) of the Indian Contract Act, and consequently liable for the amount of the bill. *IN RE Narsi S. and W. Co.*, 1. L. R., 5 Bom., 92.

As to the personal liability of directors in such a case, see *West London Commercial Bank v. Kitson*, cited *infra*.

Directors' powers to borrow money on behalf of the Company.

Where directors had power under the memorandum and articles of association to authorize the secretary, treasurer and agent of the Company to borrow money on behalf of the Company, and with that object they had filled up unallotted shares in his name on which he had raised money accordingly, the lender was held entitled to rank as a creditor of the Company for the amount advanced by him to the secretary, with interest from the date of the loan to the date of the presentation of the petition to wind-up the Company; it was further held that the lender who had unsuccessfully sued one of the directors of the Company upon a guarantee which he had given for the repayment of the loan had not thereby elected not to sue the Company. *Purmanandas Jivandas v. Cormack*, 1. L. R., 6 Bom. 326

As to a power to borrow authorizing a mortgage of the Company's property, see *IN RE Medla Tea Co.*, 1. L. R., 9 Cal., 14, referred to, *supra*, p. 64.

Ratification by shareholders.

Shareholders may ratify a borrowing by directors in excess of the powers conferred upon them by the articles of association, where the limitation in the articles does not form part of the constitution of the Company; but a ratification of past acts will not extend to future acts on the part of the directors, see *Irvine v. Union Bank of Australia*, L. R., 4, 1. A. 86; 1. L. R. 3 Cal., 280.

"The directors' general authority extends to all acts reasonably necessary for management," *e. g.*, giving in a prosperous year a gratuity to the Company's servants out of profits, *Buckley*, 4th ed., 443, citing *Hampson v. Price's Candle Co.*, 24 L. T. 711, which was distinguished in *Hutton v. West Cork Ry. Co.*, 23 Ch. Div., 654, where it was held (*Baggallay, L. J., diss.*) that the power of a Company to expend part of its monies in gratuities to its servants does not extend to a case where the Company has transferred its undertaking to another Company, and is being wound up.

But the arrest and still less the prosecution of an offender is not within the ordinary routine of banking business, and therefore not within the scope of a bank manager's ordinary authority; *Bank of N. S. Wales v. Owen*, 4 Ap. Ca. 270.

(ii) Liabilities of directors as agents for the Company.

(a) On bills of exchange signed by them purporting to have authority to bind the Company thereby, whereas the Company is not liable on such bills, see *West London Commercial Bank v. Kitson*, 12 Q. B. D., 157, cited fully, *supra*, p. 68; affirmed 13 Q. B. Div., 360, on the ground that by their acceptance of the bill in that case the defendants had represented that they had authority to accept on behalf of the Company, which being a false representation of a matter of fact and not of law, had given a cause of action to the plaintiffs, who had acted upon it.

(b) Under an agreement not signed in a form binding on the Company, *McCullin v. Gilpin*, 5 Q. B. D., 390; affirmed 6 Q. B. Div., 516.

(c) Under a guarantee entered into on behalf of the Company, *Yorkshire Railway Wagon Co. v. Maclure*, 19 Ch. D., 478; 21 Ch. Div., 309.

(d) For representing that they had an authority to borrow which in fact they did not possess, *Chapleo v. Brunswick Benefit Society*, 5 C. P. D., 331; and 6 Q. B. Div., 696.

(e) Directors can be compelled to restore to the Company at the suit of a shareholder funds of the Company which have been employed by

them in transactions into which they had no power to enter; nor need the Company be a party to such a suit. *Jehangir Rustonji Mody v. Shamji Luthra*, 4 Bom. H. C. O. C. J., 185; and such a claim was held provable under Act XXVIII. of 1865 against the directors' estate. *Liquidators of the Indian &c. Bank v. Scott*, 5 Bom. H. C. O. C. J., 167.

"The personal liability of directors as agents in suits upon contracts made by them must be governed by the ordinary law of principal and agent," Buckley, 4th ed., 444, as to which in India see Chap. X. secs. 182—238 of the Indian Contract Act IX. of 1872.

But if the misrepresentation be a mistaken representation of law the directors will not be liable, *Beattie v. Lord Ebury*, L. R., 7 Ch., 777, *ibid.* 7 H. L., 102.

B.—The position of directors as trustees, their powers and liabilities as such.

Per *James, L. J.*, in *Poole, Jackson and Whyte's case*, 9 Ch. Div., 328. "It has always been held that the directors are trustees for the shareholders, that is for the Company. They are the managing partners of the Company, and if they abuse their powers which they hold in trust for the Company, to the damage of the Company, for their own benefit, they are liable to make good the breach of trust to their *cestui que trust* like any other trustees. But directors are not trustees for the creditors of the Company. The creditors have certain rights against a Company and its members, but they have no greater rights against the directors than against any other members of the Company. They have only those statutory rights against the members which are given them in the winding-up."

Per *Brett, L. J.*, in *Wilson v. Lord Bury*, 5 Q. B. Div., 527; "Directors of a Company are the agents, and, in some respects, trustees, of the Company and its shareholders, not of strangers dealing with the Company by way of contract or otherwise."

Per *Phear, J.*, in *IN RE Port Canning Land &c. Co.*, 6 Beng. L. R., 278-281: "I think the result of the cases is that directors of public Companies are, generally speaking, better designated as agents of the Company than as trustees. As regards strangers, they are the agents of the Company through whom the Company necessarily acts. But as regards the shareholders they are still always clothed with a fiduciary character in reference to any dealings with property of the Company, which they have in their capacity of directors. And it not seldom happens, moreover, that they are, in special cases at any rate, in the strictest sense trustees of the shareholders. Whether or not, then, in any given matter a director of a Company is to be treated as a trustee, and if so to what extent, is, I apprehend, a question of fact."

See also per *Bacon, V. C.*, in *London Financial Association v. Kelk*, 26 Ch. D., at p. 143, and per *Bowen, L. J.* in *Imperial Hydropathic Hotel Co. v. Hampson*, 23 Ch. Div., at p. 12, per *Fry J.*, in *IN RE Alexandra Palace Co.*, 21 Ch. D., p. 163, per *Jessel, M. R.* in *Flitcroft's case*, 21 Ch. Div., p. 534.

See further, Buckley, 4th ed., 455 *et seqq.*, as to their duties and liabilities as trustees.

A director acting on behalf of a Company cannot make profit for himself out of the purchase by him on behalf of the Company of the property from the vendor, *Anderson v. Spence's Hotel Co.*, 1 Ind. Jur., N. S. 378.

The case of *Wilson v. Lord Bury*, 5 Q. B. Div., 518, is an extremely important one upon the question of how far and in what way directors may be held personally liable. There a Company had been formed for the purpose of receiving money from depositors and investing it upon security. The plaintiff deposited with the Company of which the

defendants were directors the sum of £1,000 upon the terms that it should remain in their hands for five years, that they should meanwhile pay him interest at the rate of 6 per cent., that by way of security they should transfer to him a mortgage made to them, and that if the mortgage should become ineffective before the expiration of the five years, they would replace it by another. The mortgage, upon which the £1,000 belonging to the plaintiff was secured, was paid off before the expiration of the five years, but the Company did not replace it by another, and dealt with the proceeds as part of the funds of the Company. The Company ultimately went into liquidation, and the plaintiff then sued the defendants to recover from them the sum of £1,000 paid by him to the Company, on the ground that it was lost to him through the defendants' gross negligence. At the trial it was proposed to show that, at the time when the mortgage securing the plaintiff's £1,000 was paid off the Company was insolvent; the Judge, however, rejected the evidence, directed the jury to find for the defendants, and entered judgment for them:—It was held, per *Bramwell* and *Brett*, *L. J. J.* (*Baggallay*, *L. J.*, *diss.*) that the ruling of the Judge at the trial was right, and that the judgment must be affirmed. Per *Bramwell*, *L. J.*, that if a trust had been created between the plaintiff and the Company, the defendants, as directors, could not be held personally liable for it. Per *Brett*, *L. J.*, that a contract, and not a trust, existed between the plaintiff and the Company, and that the defendants could not be held liable as constructive trustees for aiding and abetting in the breach of a trust. Per *Baggallay*, *L. J.*, the relation of trustee and *cestui que trust* existed between the Company and the plaintiff, that a breach of trust had been committed by the Company, that the defendants were parties to the breach of trust, and that the evidence rejected ought to have been admitted, as it tended to show whether the defendants had derived any personal benefit from the breach of trust.

II. Duties of directors.

See Buckley, 4th ed., pp. 448, *et seqq.*

A director is not bound to examine entries in any of the Company's books; nor is the doctrine of constructive notice to be so extended as to impute to him a knowledge of the contents of the books. Nor is he, if innocent, personally responsible for the fraud of his co-directors in issuing to the shareholders false and fraudulent reports and balance sheets, if the books and accounts have been duly audited by responsible officers, and he has no ground for suspecting fraud: even though the words "by order of the directors" have been appended to the reports. *IN RE Denham and Co.*, 25 Ch. D., 752. [*Cf. Cargill v. Bower*, 10 Ch. D., 502.]

Power of directors to interfere with agents of the Company.

In *Nusserwanji Merwanji Panday v. Gordon*, 1 L. R., 6 Bom. 266, where neither the memorandum or articles of association nor the agreement entered into between the Company and the firm who had been appointed its agents (from which several instruments the agents derived their powers), contained any provision that the exercise of these powers should be subject to the assent or control of the directors but the powers were given absolutely and unconditionally, and to be exercised as the agents might think fit; where, moreover, a further clause of the articles of association, which determined the powers of the directors and conferred on them the management of the business of the Company and the power to do all acts which the Company were authorized to do (otherwise than in general meeting) expressly made such powers subject to the provisions of the articles themselves, and therefore in subordination to those powers and to the powers which by the agreement had been expressly conferred by the Company itself on the agents.

It was held that the directors had no other right to interfere with the agents in the exercise of their powers otherwise than as representing the Company in virtue of their general powers of management of the business of the Company, and in such character to watch over the interests of the Company and take care that these powers were properly and

efficiently exercised by the agents in accordance with their contract. Consequently, the directors by their appointment of a firm of solicitors to be the solicitors of the Company in substitution for the firm already appointed by the agents were exceeding their powers.

But it being admitted that the conduct of the defendants, the directors of the Company, would be supported by the Company in general meeting, owing to their having a preponderance of votes, it was held that inasmuch as the Court would not, by a decree for specific performance or by injunction compel the Company to retain the plaintiffs in the confidential position of agents, it would not restrain the defendants or the Company from appointing a solicitor, which was only a violation of what was ancillary or incidental to the principal part of the contract, viz., the agreement that the plaintiffs should be the agents of the Company for twenty-five years. The rule therefore which the plaintiffs had obtained, calling on the defendants to show cause why they should not be restrained from employing the firm of solicitors appointed by the directors at a Board meeting as solicitors of the Company was discharged, but without costs; as the directors were to blame in acting as they did without first calling a general meeting to decide upon a matter which was provided for by the articles of association, and the defendants, the directors, were ordered to pay the costs of the Company.

In *Smith v. Duke of Manchester*, 24 Ch. D., 611, the directors of a Company were restrained from applying the assets of the Company in paying the costs of a petition to wind-up the Company presented by themselves but opposed by a number of directors and a minority of shareholders, and the costs of an appeal from such dismissal; such intended application of the assets being *ultra vires* of the articles of association; although one of the articles empowered the directors to direct actions or legal proceedings on behalf of the Company, or to defend actions, and indemnify them out of the Company's funds in respect of the costs of such actions.

III. Removal of directors and other matters.

In *Imperial Hydropathic Co. v. Hampson*, 23 Ch. Div., 1, it was held that a joint stock Company whose directors were appointed for a definite period, had no inherent power to remove them before the expiration of that period; and that if the articles of association of a Company contain no power to remove directors before the expiration of their period of office, but authorize the shareholders by special resolution to alter any of the articles, there must be a special resolution altering the articles so as to give power to remove directors before a resolution can be passed to remove any of them. See this case discussed and explained on this latter point in *Taylor v. Pilsen Joel and General Electric Light Co.*, 27 Ch. D. 268; 53 L. J., Ch. D., 857.

In *Harben v. Phillips*, 23 Ch. Div., 14, the Court of Appeal, although it held that the resolution in the case not having been passed as a special resolution was not an effectual exercise of the powers given by the articles to remove directors, refused to grant an interlocutory injunction to prevent the exclusion of the plaintiffs, but exacted an undertaking that two other directors whose election was open to doubt, should not act until after the hearing of the case.

See further as to removing directors, *Isle of Wight Co. v. Tahourdin*, 25 Ch. Div., 320 (under the Companies' Clauses Consolidation Act, 1845).

In *Nusserwanji v. Gordon*, I. L. R. 6 Bom. 266 (cited fully *supra*), a proposed amendment of the plaint by alleging a cause of action in them *as shareholders* as well as *parties contracting with the Company* was refused upon the ground that in those two capacities they could not be said to have the same "cause of action," by which words were meant not only the act complained of but also the right violated by that act. The rights of the plaintiffs as contractors were rights given to them by their

agreement; but their rights as shareholders were rights secured to them by the articles of association.

Interference by High Court on behalf of directors.

The High Court will interfere by *mandamus* to enforce the right of persons duly elected directors of a joint stock Company, to exercise the office and functions of directors, if that right is interfered with on the part of the Company acting through the directors or other officers of the Company. And *semble* the Court will not refuse to interfere by *mandamus* simply because the office of director is not a permanent office, or because a director can be removed from his office by a special resolution of the shareholders, but in a proper case will reinstate him in his position. *IN RE The Albert Mills Co.*, 9 Bom. II. C., 438, in which case, however, *Green J.*, refused to grant a *mandamus*.

Cf. *Pulbrook v. Richmond Consolidated Mining Co.*, 9 Ch. D., 610; and *Munster v. Cammell Co.*, 21 Ch. D., 183.

By sec. 50 of the Specific Relief Act I. of 1877 writs of *mandamus* are abolished, but Chapter VIII. of that Act provides for the enforcement of public duties.

Casual vacancies.

As to casual vacancies in the board of directors, see art. 64 and note thereto, *post*.

Disqualification of Directors.

Directors' disqualification.

(57) The office of director shall be vacated—if he, or any partner of his, or the firm of which he is a member, holds any other office or place of profit under the Company;

if he becomes bankrupt or insolvent;

if he is punished under any of the penal provisions of the foregoing Act;

if he is concerned in or participates in the profits of any contract with the Company.

But the above rules shall be subject to the following exceptions:—that no director shall vacate his office by reason of his being a member of any Company which has entered into contracts with or done any work for the Company of which he is director; nevertheless, he shall not vote in respect of such contract or work, and, if he does so vote, his vote shall not be counted.

Art. 57 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, save that in the present article the words "or any partner of his, or the firm of which he is a member," and the clause "if he is punished under any of the penal provisions of the foregoing Act," are new.

As to the first of these additions Mr. Stokes, in moving the adoption of the report of the Select Committee on the Indian Companies' Act 1882, remarked: "The object of this, of course, is to prevent any one firm from getting the management of a Company too much into its own hands: to prevent, for example, one partner from being a director, another the attorney, and the firm the secretaries and treasurers of the Company." It is to be regretted that this article was not incorporated into the Act

itself, having regard to the numerous cases which have arisen in Bombay, at all events, of "one firm getting the management of a Company too much into its own hands." See *Nusserwanji v. Gordon*, 1 L. R., 6 Bom. 266.

Mr. Stokes further observed that "the committee had also provided that a director shall be disqualified if he were punished under any of the penal clauses contained in this Act; of course under sec. 76 any Company could by passing a special resolution alter these regulations; but he hoped and believed that this would not often be done." See *The Government Gazette* of 23rd February 1882.

As to the general principle to which this article gives effect that a person holding a "fiduciary position as director with regard to a Company cannot obtain a benefit to himself from the employment of the funds of the Company in any matter in which he may happen to be engaged." See Buckley, 4th ed., 451, 452, and see the cases there cited, and see *Anderson v. Spence's Hotel Co.*, 1 Ind. Jur., N. S. 378. In *IN RE Port Canning Land, &c. Co.*, 6 Beng. L. R., 278, the partner of one of the directors of the Company who had done work for the directors as a solicitor was held entitled to claim in the winding-up in respect of such work, there being nothing to show that he had not been duly appointed by the directors, or that his partner the director had procured his appointment by the board.

But a Company may expressly stipulate that it shall not be entitled to the exclusive services of its directors, see Buckley, 4th ed., 452; and Palmer's Company Precedents, 3rd ed., p. 145, where the form of such an express stipulation is to be found. By article (65), *post*, a director may be removed by a special resolution of the Company passed at a general meeting.

Rotation of Directors.

(58) At the first ordinary meeting after the registration of the Company, the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office. Retirement of directors.

Art. 58 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

By art. (29) *supra*, the first general meeting is to be held within six months after registration, and by art. (31) *supra*, such meeting will be an ordinary meeting.

Cf. sec. 75 of the Act, *supra*, p. 70.

(59) The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the Company shall, unless the directors agree among themselves, be determined by ballot. In every subsequent year, the one-third or other nearest number who have been longest in office shall retire. Number of retiring directors to be determined by ballot.

Art. 59 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

Retiring
directors
re-eligible.

(60) A retiring director shall be re-eligible.

Art. 60 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

Election of
directors.

(61) The Company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

Art. 61 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

As to the power of a general meeting of shareholders of a Company governed by the Companies' Clauses Consolidation Act 1815, to fill up the vacancies in the board of directors, in the event of all the directors being removed, or if the directors decline to exercise the powers given to them by sec. 89 of that Act, see *Isle of Wight Ry. Co. v. Tahourdin*, 25 Ch. Div., 320, cited *supra*, note to art. 56.

Adjournment
of meeting,
if vacating
directors not
filled up.

(62) If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

Art. 62 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

Number of
directors.

(63) The Company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

Art. 63 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

Casual
vacancies.

(64) Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

Art 64 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

The articles of association of a Company provided that the directors might fill up any casual vacancy on the board. A casual vacancy occurred in February, and in March a general meeting of the Company was held. The vacancy was not filled up by the general meeting but it was held that the board had power to fill up the vacancy afterwards; and *semble* that the general meeting could have filled up the vacancy. *Munster v. Cammell Co.*, 21 Ch. D., 183, per *Fry J.* p. 187, "Any casual vacancy" in my judgment is any vacancy in the office of directors otherwise than by retirement in rotation pointed out by the previous articles." See further as to the meaning of "casual vacancy," per *Manisty, J.*, in *York Tramways Co. v. Willows*, 8 Q. B. D., p. 690; and per *Lord Coleridge, C. J. ibid.* (C. A.) p. 694.

Where the articles of association provided that the number of directors should not be less than four or more than seven, but also that two directors should form a quorum, and that the continuing directors might act notwithstanding any vacancy in the board; and the directors were empowered to fill up casual vacancies; it was held that although no board of four directors existed, an allotment of shares made by two directors (who had elected a third director who was not, however, present at the allotment of shares), was valid. *IN RE Scottish Petroleum Co.*, 23 Ch. Div., 413.

Per *Green, J.*, in *IN RE Albert Mills Co.*, 9 Bom. H. C., p. 446. "The word 'casual' in itself means something fortuitous, something not anticipated or predetermined." In that case at the time of the general meeting of the Company in November 1871 there were two casual and two non-casual vacancies (*i.e.* directors were retiring by rotation). The two non-casual vacancies were filled up by the re-appointment of the two retiring directors. In February 1872 another casual vacancy (*viz.*, caused by death) occurred in the board. On the 2nd September 1872 the directors, who had power to fill up casual vacancies, appointed three persons to be directors. It was argued that as two casual vacancies existed at the time of the general meeting in November 1871 and the shareholders were silent as to filling them up, an intention not to fill them up should be presumed. But *Green, J.* held the appointment of the three persons by the directors to be valid. But whether the directors in that case were justified in appointing the three persons as directors in September 1872, after several of the shareholders in July 1872, had sent in a requisition to them requiring them to call a meeting to appoint three new directors, which meeting had been summoned for, and was held on the 4th September 1872, and at which three other persons were appointed directors, *Query?* *ibid.* p. 446.

(65) The Company in general meeting may, by Removal of
a special resolution(i), remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed. directors.

Art. 65 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) Sec. 77, *supra*, p. 71.

See the note to art. 56, *supra*, for several cases on the subject of the removal of directors.

Proceedings of Directors.

Directors'
meetings :—
quorum :—
votes.

(66) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

Art. 66 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

See the note to this article in Buckley, 4th ed., 456, 457, and whether when articles provide that there shall be a certain number of directors, this is imperative or directory, *ibid*.

As to the right of a director to an injunction, on the ground of individual injury to himself, to restrain his co-directors from wrongfully excluding him from acting as a director, see *Pulbrook v. Richmond Consolidated Mining Co.*, 9 Ch. D., 610. *Munster v. Cammell Co.*, 21 Ch. D., 183; 51 L. J. Ch. D., 731; and cf. *IN RE Albert Mills*, 9 Bom. H. C., 438, cited *supra*.

Chairman.

(67) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

Art. 67 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

Commit-
tees :—

(68) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

Art. 68 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

When the articles empowered the board of directors to appoint committees of their own number, and to delegate to any such committee all or any of the powers of the board, it was held that one director, appointed by the board with all the powers of the board, validly constituted a committee. *IN RE Taurine Co.*, 25 Ch. Div., 511.

(69) A committee may elect a chairman of its meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting. Chairman of Committee.

Art. 69 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866.

(70) A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present; and in case of an equality of votes the chairman shall have a second or casting vote. Proceedings of Committee.

Art. 70 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862, and to the Indian Companies' Act X. of 1866, *verbatim*.

(71) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director. Acts of disqualified Directors.

Art. 71 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

Cf. sec. 92, *supra*. See Buckley, 4th ed., 168, 169.

Dividends.

(72) The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the members in proportion to their shares. Dividends.

Art. 72 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

"The word 'shares' signifies the amount of subscribed capital which the member has either contributed already, or has undertaken to

contribute and has no reference whatever to the different amounts which may have been paid up, under call, upon different classes of shares," per *Lord Blackburn in Oakbank Oil Co. v. Crum*, 8 Ap. Ca., p. 66; see this case cited *supra*, p. 21.

Payable out
of profits.

(73) No dividend shall be payable except out of the profits arising from the business of the Company.

Art. 73 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

Profits.

See and consider the note to this article, Buckley, 4th ed., p. 468, 459, where the question what are profits, is fully discussed; and the conclusion arrived at that "for the purpose of determining profits you must disregard accretions to or diminutions of capital." But Mr. Palmer (Company's Precedents, 3rd ed., p. 170), submits that this contention is not well founded, upon the ground that "to adopt it is to introduce a rule for ascertaining the profits of a limited Company which is not applicable in the case of an ordinary partnership, and that to the detriment of the Company's creditors." See further the cases and authorities cited by him, pp. 170, 171. For the mode of arriving at profits under this table see art. 80, *post*.

Illegality of
paying
dividends out
of capital in
the case of
Companies
limited by
shares.

See per *Jessel, M. R., Flitcroft's case*, 21 Ch. Div., 533; per *Cotton, L. J.*, *ibid.* 536; per *Cotton, L. J.*, in *Guinness v. Land Corporation of Ireland*, 22 Ch. Div., 375; and per *Fry, J.*, in *IN RE Alexandra Palace Co.*, 21 Ch. D., 160.

Payment of dividends out of capital if *ultra vires* of the Company, is not capable of ratification by the shareholders. *Flitcroft's case*, 21 Ch. Div., 519.

Liability of
directors.

As to the joint and several liability of directors under sec. 214, *supra*, for such payments, see *Flitcroft's case*, *ubi supra*, and the cases in the note to sec. 214, *supra*, p. 167.

Shareholders
may apply to
restrain.

The Court will, at the instance of a shareholder of a going Company, interfere by injunction to restrain the payment of dividends out of capital, *Macdougall v. Jersey Imperial Hotel Co.*, 2 H. and M., 528; *Guinness v. Land Corporation of Ireland*, 22 Ch. Div., 349; but not at the suit of a mere contract creditor, *Mills v. Northern Co. L. R.*, 5 Ch., 621, but *semble* per *Jessel, M. R.*, in *Flitcroft's case*, 21 Ch. Div., 533, 534, a creditor would have a right to interfere. "The creditor has no debtor but that palpable thing the corporation, which has no property except the assets of the business. The creditor, therefore, I may say, gives credit to that capital, gives credit to the Company on the faith of the representation that the capital shall be applied only for the purposes of the business, and he has therefore a right to say that the corporation shall keep its capital, and not return it to the shareholders, though it may be a right which he cannot enforce otherwise than by a winding-up order."

Vendor's
guarantee of
dividends.

As to the questions that may arise where vendors guarantee dividends for a certain number of years, and the Company is wound-up during the currency of the guarantee, see Buckley, 4th ed., 460, 461. In drawing up such guarantees great care must be taken so that they may not merely amount to payment of dividends out of capital, see Palmer's Company Precedents, 3rd ed., p. 18, 19, and see further and consider *IN RE South Llanharra Colliery Co.*, ex parte *Jegon*, 12 Ch. Div., per *Cotton, L. J.*, p. 509. A Company can release its vendor from such a guarantee, *Sheffield Nickel Co. v. Unwin*, 2 Q. B. D., 214.

Reserve
Fund.

(74) The directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a

reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the Company or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

Art. 74 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(75) The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the Company on account of calls or otherwise. Debts to be deducted from dividends.

Art. 75 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(76) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned(i); and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the Company. Notice and forfeiture of dividends.

Art. 76 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) See arts. (95)—(97), *post*.

(77) No dividend shall bear interest as against the Company. Interest.

Art. 77 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

Accounts.

(78) The directors shall cause true accounts to be kept— Accounts.

of the stock in trade of the Company;
of the sums of money received and expended by the Company, and the matters in respect of which such receipt and expenditure take place; and
of the credits and liabilities of the Company.

The books of account shall be kept at the registered office of the Company, and, subject to any reasonable restrictions as to the time and manner of

inspecting the same that may be imposed by the Company in general meeting, shall be open to the inspection of the members during the hours of business(i).

Art. 78 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) Sec. 200, *supra*, after winding-up order has been made; secs. 82, 87 *supra*, by inspectors in going Company.

For the penalties on directors for falsification of books, sec. 215, *supra*; secs. 216, 217, *supra*, provide respectively for the prosecution of delinquent directors in winding-up by the Court; and the penalty for false evidence under this Act.

Annual
statement.

(79) Once at the least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

Art. 79 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

Contents of
annual state-
ment of profit
and loss.

(80) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

Art. 80 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

Balance
sheet.

(81) A balance-sheet shall be made out in every year and laid before the Company in general meeting, and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged

under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

Art. 81 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(82) A printed copy of such balance-sheet shall, Copy balance sheet to be served on members. seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served(i).

Art. 82 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(i) Arts. (95)—(97), *post*.

Audit.

(83) Once at the least in every year the accounts Auditors. of the Company shall be examined, and the correctness of the balance-sheet ascertained by one or more auditor or auditors.

Art. 83 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(84) The first auditors shall be appointed by the Appointment of. directors; subsequent auditors shall be appointed by the Company in general meeting.

Art. 84 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(85) If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

Art. 85 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(86) The auditors may be members of the Com- Auditors may be members of Company. pany; but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the Company; and no director or other officer of the Company is eligible during his continuance in office.

Art. 86 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

Election of auditors.

(87) The election of auditors shall be made by the Company at their ordinary meeting in each year.

Art. 87 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

Remuneration of auditors.

(88) The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the Company in general meeting.

Art. 88 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

Re-eligible.

(89) Any auditor shall be re-eligible on his quitting office.

Art. 89 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

Casual vacancies.

(90) If any casual vacancy occurs in the office of any auditor appointed by the Company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

Art. 90 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

Appointment by Local Government.

(91) If no election of auditors is made in manner aforesaid, the Local Government may, on the application of not less than five members of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services.

Art. 91 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862, substituting "Local Government" for "Board of Trade" in that article; and to the Indian Companies' Act X. of 1866, *verbatim*.

Duties of auditors.

(92) Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

Art. 92 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(93) Every auditor shall have a list delivered to him of all books kept by the Company, and shall at

all reasonable times have access to the books and accounts of the Company. He may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors or any other officer of the Company.

Art. 93 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

(94) The auditors shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations and properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have or has been given by the directors and whether they or it have or has been satisfactory. Such report shall be read, together with the report of the directors, at the ordinary meeting.

Art. 94 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

As to how far auditors are agents of the shareholders, see Mr. Buckley's note to the above article, 4th ed., p. 466.

Notices.

(95) A notice may be served by the Company upon any member either personally or by sending it through the post in a letter addressed to such member at his registered place of abode. Service of notices.

Art. 95 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862, omitting the word "prepaid" before "letter" in that article; and to the Indian Companies' Act X. of 1866, *verbatim*.

The registered address must be in fact the address of the member to render valid the service of legal proceedings there, even though the articles contained a provision that notices, required to be served by the Company on shareholders, might be served by leaving them at their registered addresses, *ex parte Chatteris*, 11 R. 10 Ch., 227; see also *London, Bombay and Mediterranean Bank v. Govind Ramchandra*, 1 L. R., 5 Bom., 223, where it was held by *West, J.*, that the address or residence of a member of a Company entered in the register

of shareholders, though sufficiently ascertained for the purposes of the Company, is not, therefore, ascertained for a service of legal proceedings. For the purpose of such service care must be taken to find out the last known place of abode of the alleged contributory, and to effect substituted service there. And in *IN RE London and Staffordshire Fire Insurance Co.*, 24 Ch. D., 149, *Pearson, J.*, held that the provisions of this art., and art. 97 for the service of notices by a Company on its members, apply only to notices relating to the ordinary business of the Company, and that service in the manner in these articles pointed out was not sufficient for the purpose of fixing a shareholder with knowledge of a misrepresentation which would have entitled him to repudiate his shares, unless he had been guilty of laches after notice of misrepresentation.

Notice to
persons
jointly
entitled to
shares.

(96) All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

Art. 96 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

Notice by
post.

(97) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

Art. 97 of table A to the English Companies' Act (25 and 26 Vic., c. 89), 1862; and to the Indian Companies' Act X. of 1866, *verbatim*.

See note to article 95, *supra*.

21

CAPITAL AND LIABILITIES.		PROPERTY AND ASSETS.	
I. CAPITAL,	II. DEBTS AND LIABILITIES OF THE COMPANY,	III. PROPERTY HELD BY THE COMPANY,	IV. DEBTS OWING TO THE COMPANY,
1	2	3	4
5	6	7	8
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341	342	343	344
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365	366	367	368
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453	454	455	456
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533	534	535	536
537	538	539	540
541	542	543	544
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561	562	563	564
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569	570	571	572
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713	714	715	716
717	718	719	720
721	722	723	724
725	726	727	728
729	730	731	732
733	734	735	736
737	738	739	740
741	742	743	744
745	746	747	748
749	750	751	752
753	754	755	756
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761	762	763	764
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785	786	787	788
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797	798	799	800
801	802	803	804
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809	810	811	812
813	814	815	816
817	818	819	820
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825	826	827	828
829	830	831	832
833	834	835	836
837	838	839	840
841	842	843	844
845	846	847	848
849	850	851	852
853	854	855	856
857	858	859	860
861	862	863	864
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869	870	871	872
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953	954	955	956
957	958	959	960
961	962	963	964
965	966	967	968
969	970	971	972
973	974	975	976
977	978	979	980
981	982	983	984
985	986	987	988
989	990	991	992
993	994	995	996
997	998	999	1000

(a) See clauses 81 and 82 of the foregoing Table A.

The same as the balance sheet to table A of Act X. of 1866.

Cf. the balance sheet to table A of the English Act 1862.

TABLE B(i).

TABLE OF FEES to be paid to the Registrar of joint stock Companies by a Company having a capital divided into shares.

	Rs.	a.	p.
For registration of a Company whose nominal capital does not exceed Rs. 20,000, a fee of ...	40	0	0
For registration of a Company whose nominal capital exceeds Rs. 20,000, the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital; (that is to say)—			
For every 10,000 rupees of nominal capital, or part of 10,000 rupees, after the first 20,000 rupees, up to 50,000 rupees	20	0	0
For every 10,000 rupees of nominal capital, or part of 10,000 rupees, after the first 50,000 rupees, up to 1,00,000 rupees	5	0	0
For every 10,000 rupees of nominal capital, or part of 10,000 rupees after the first 1,00,000 rupees	1	0	0
For registration of any increase of capital made after the first registration of the Company, the same fees per 10,000 rupees, or part of 10,000 rupees, as would have been payable if such increased capital had formed part of the original capital at the time of registration.			
Provided that no Company shall be liable to pay in respect of nominal			

Rs. a. p.

capital on registration, or afterwards any greater amount of fees than 1,000 rupees, taking into account, in the case of fees payable on an increase of capital after registration, the fees paid on registration.

For registration of any existing Company, except such Companies as are by this Act exempted from payment of fees in respect of registration under this Act the same fee as is charged for registering a new Company.

For registering any document hereby required or authorized to be registered, other than the memorandum of association ... 5 0 0

For making a record of any fact hereby authorized or required to be recorded by the Registrar of Companies, a fee of ... 5 0 0

Cf. Table B to English Act, 1862.

Table B to Indian Act, 1866, *verbatim*.

(i) Sec. 40 *supra*, p. 29 and sec. 95 *supra*, p. 83.

TABLE C(i).

TABLE OF FEES to be paid to the Registrar of joint stock Companies by a Company not having a capital divided into shares :—

For registration of a Company whose number of members, as stated in the articles of association, does not exceed 20 ... 40 0 0

For registration of a Company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100 ... 100 0 0

For registration of a Company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of Rs. 100, with an additional Rs. 5 for every 50 members, or less number than 50 members, after the first 100.

For registration of a Company in which the number of members is stated in the articles of association to be unlimited, a fee of ... 400 0 0

For registration of any increase in the number of members made after the registration of the Company, in respect of every 50 members, or less than 50 members, of such increase ... 5 0 0

Provided that no one Company shall be liable to pay on the whole a greater fee than Rs. 400 in respect of its number of members, taking into account the fee paid on the first registration of the Company.

For registration of any existing Company, except such Companies as are by this Act exempted from payment of fees in respect of registration under this Act⁽ⁱ⁾, the same fee as is charged for registering a new Company.

For registering any document hereby required or authorized to be registered, other than the memorandum of association ... 5 0 0

For making a record of any fact hereby authorised or required to be recorded by the Registrar of Companies, a fee of ... 5 0 0

Table C to English Act, 1862.

Table C to Indian Act, 1866.

(i) see secs. 40 and 95 *supra*, pp. 29 and 83.

(ii) Sec. 233 *supra*, p. 182.

FORM D.

FORM OF STATEMENT REFERRED TO IN PART III.

OF THE ACT(i).

* The Capital of the Company is Rs.
divided into shares of each.

The number of shares issued is . Calls to
the amount of Rs. per share have been made,
under which the sum of Rs. has been
received.

The liabilities of the Company on the first day of
January (*or* July) were :—

Debts owing to sundry persons by the Company.

Under decree, Rs.

On mortgages or bonds, Rs.

On notes, bills or hundis, Rs.

On other contracts, Rs.

On estimated liabilities, Rs.

The assets of the Company on that day were :—

Government securities [*stating them*], Rs.

Bills of exchange, hundis and promissory
notes, Rs.

Cash at the bankers, Rs.

Other securities, Rs.

Form D to English Act, 1862; and Form D to Indian
Act, 1866.

* If the Company has no capital divided into shares, the portion of the
statement relating to capital and shares must be omitted.

Second Schedule.

(SEE SECTION 95, *supra*, p. 83).

FORM A.

Memorandum of association of a Company limited by shares(i).

1st.—The name of the Company is “The Company, Limited.”

2nd. The registered office of the Company will be situate in

3rd.—The objects(ii) for which the Company is established are “ ” and the doing all such other things as are incidental or conducive(iii) to the attainment of the above objects.”

4th.—The liability of the members is limited.

5th.—The capital of the Company is Rs. divided into shares of Rs. each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names :—

Names, addresses and description of subscribers.	Number of shares taken by each subscriber.
1. A.B. of	
2. C.D. of	
3. E.F. of	
4. G.H. of	
5. I.J. of	
6. K.L. of	
7. M.N. of	
Total shares taken...	

Dated the day of
Witness to the above signatures.
O. P. of

Second schedule Form A, English Act, 1862, and Indian Act, 1866.

(i) Sec. 8, *supra*, p. 7.

(ii) See Buckley, 4th ed., 470.

(iii) See Buckley, 4th ed., 470 and cases there cited.

FORM B.

Memorandum and articles of association of a Company limited by guarantee, and not having a capital divided into shares(i).

Memorandum of Association.

1st.—The name of the Company is “The Mutual Calcutta Marine Association, Limited.”

2nd.—The registered office of the Company will be situate in Calcutta.

3rd.—The objects for which the Company is established are “the mutual insurance of ships belonging to Members of the Company, and the doing all such other things as are incidental or conducive(ii) to the attainment of the above objects.”

4th.—Every member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding Rs. 100.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

1. A. B. of
2. C. D. „
3. E. F. „
4. G. H. „
5. I. J. „
6. K. L. „
7. M. N. „

Dated the _____ *day of*

Witness to the above signatures,

O. P. of

*Articles of Association to accompany preceding
Memorandum of Association⁽ⁱⁱⁱ⁾.*

(1) The Company, for the purpose of registration is declared to consist of five hundred members^(iv).

(2) The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of Members.

(3) Every person shall be deemed to have agreed to become a member of the Company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings.

(4) The first general meeting shall be held at such time, not being more than three months after the incorporation of the Company, and at such place as the directors may determine.

(5) Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting; and, if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(6) The abovementioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(7) The directors may, whenever they think fit, and they shall, upon a requisition made in writing

by any five or more members, convene an extraordinary general meeting.

(8) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

(9) Upon the receipt of such requisition, the directors shall forthwith proceed to convene a general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists or any other five members may themselves convene a meeting.

Proceedings at General Meetings.

(10) Seven days' notice at the least, specifying the place, the day and the hour of meeting, and, in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(11) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets and the ordinary report of the directors.

(12) No business shall be transacted at any meeting, except the declaration of a dividend, unless a quorum of members is present at the commencement of such business. Such quorum shall be ascertained as follows, that is to say:—if the members of the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty; with this limitation, that no quorum shall in any case exceed thirty.

(13) If, within one hour from the time appointed for the meeting, a quorum of members is not present,

the meeting, if convened upon the requisition of the members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the following week, at the same time and place; and, if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

(14) The chairman (if any) of the directors shall preside as chairman at every general meeting of the Company.

(15) If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some of their number to be chairman of such meeting.

(16) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(17) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(18) If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs; and the result of such poll shall be deemed to be the resolution of the Company in general meeting.

Votes of Members.

(19) Every member shall have one vote and no more.

(20) If any member is a lunatic or idiot, he may vote by his committee or other legal curator: if any member is a minor, he may vote by his guardian or any one of his guardians if more than one.

(21) No member shall be entitled to vote at any meeting unless all monies due from him to the Company have been paid.

(22) Votes may be given either personally or by proxies. A proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under its common seal.

(23) No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

(24) Any instrument appointing a proxy shall be in the following form:—

Company, Limited.

I, _____, of _____,
being a member of the _____
Company Limited, hereby appoint _____,
of _____, as my proxy, to vote for
me and on my behalf at the (ordinary *or* extra-
ordinary, *as the case may be*) general meeting of the
Company to be held on the _____ day of _____,
and at any adjournment thereof (*or* at any meeting
of the Company that may be held in the year _____).
As witness my hand, this _____ day of _____
Signed by the said _____
in the presence of _____

Directors.

(25) The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

(26) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

Powers of Directors.

(27) The business of the Company shall be managed by the directors, who may exercise all such powers of the Company as are not hereby required to be exercised by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Election of Directors.

(28) The directors shall be elected annually by the Company in general meeting.

Business of Company.

(Here insert rules as to mode in which business of insurance is to be conducted.)

Accounts.

(29) The accounts of the Company shall be audited by a Committee of five members, to be called the audit-committee.

(30) The first audit-committee shall be nominated by the directors out of the body of members.

(31) Subsequent audit-committees shall be nominated by the members at the ordinary general meeting in each year.

(32) The audit-committee shall be supplied with a copy of the balance-sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto.

(33) The audit-committee shall have a list delivered to them of all books kept by the Company, and they shall at all reasonable times have access to the books and accounts of the Company.

They may, at the expense of the Company, employ accountants or other persons to assist them in investigating such accounts, and they may, in relation to such accounts, examine the directors or any other officer of the Company.

(34) The audit-committee shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the particulars required by these regulations and properly drawn up, so as to exhibit a true and correct view of the state of the Company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have or has been given by the directors, and whether they or

it have or has been satisfactory ; and such report shall be read together with the report of the directors at the ordinary meeting.

Notices.

(35) A notice may be served by the Company upon any member, either personally, or by sending it through the post in a letter addressed to such member at his registered place of abode.

(36) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post ; and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

Winding-up.

(37) The Company shall be wound-up voluntarily whenever an extraordinary resolution, as defined by The Indian Companies' Act, 1862(v), is passed, requiring the Company to be wound-up voluntarily.

Names, Addresses and Descriptions of Subscribers.

1	A. B. of	...	Merchant.
2	C. D. of	...	"
3	E. F. of	...	"
4	G. H. of	...	"
5	I. J. of	...	"
6	K. L. of	...	"
7	M. N. of	...	"

Dated the day of 18 .

Witness to the above signatures,

O. P. of

Form B, second schedule, English Act, 1862.

Form B, Indian Act, 1866.

(i) Secs. 9 *supra*, p. 8, and 37 *supra*, p. 27.

(ii) See Buckley, 4th ed., 470.

(iii) Sec. 37, *supra*, p. 27.

(iv) As to notice of increase of number, sec. 57, *supra*, p. 48.

(v) This should be 1882, now.

FORM C.

Memorandum and articles of association of a Company limited by guarantee, and having a capital divided into shares(i).

Memorandum of Association.

1st.—The name of the Company is “ The Hotel Company, Limited.”

2nd.—The registered office of the Company will be situate in

3rd.—The objects for which the Company is established are “ the facilitating travelling in by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive(ii) to the attainment of the above objects.”

4th.—Every member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound-up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding Rs. 200.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

- 1 A. B. of
- 2 C. D. of
- 3 E. F. of
- 4 G. H. of
- 5 I. J. of
- 6 K. L. of
- 7 M. N. of

Dated the day of 18 .

Witness to the above signatures.

O. P. of

*Articles of Association to accompany preceding
Memorandum of Association*⁽ⁱⁱⁱ⁾.

1. The capital of the Company shall consist of five lakhs of rupees, divided into five thousand shares of one hundred rupees each.

2. The directors may with the sanction of the Company in general meeting, reduce the amount of shares.

3. The directors may, with the sanction of the Company in general meeting, cancel any shares belonging to the Company.

4. All the articles of table A shall be deemed to be incorporated with these articles, and to apply to the Company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, addresses and descriptions of subscribers.	Number of shares taken by each subscriber.
1 A. B. of	
2 C. D. of	
3 E. F. of	
4 G. H. of	
5 I. J. of	
6 K. L. of	
7 M. N. of	
	Total shares taken _____

Dated the day of 18 .

Witness to the above signatures,

O. P. of

Form C. second schedule, English Act, 1862; and Indian Act, 1866.

(i) Secs. 9 and 37, *supra*, pp. 8, 27.

(ii) See Buckley, 4th ed., 470.

(iii) Sec. 37, *supra*, p. 27.

FORM D.

Memorandum and articles of association of an unlimited Company having a capital divided into shares⁽ⁱ⁾.

Memorandum of Association.

1st.—The name of the Company is “The Patent Company.”

2nd.—The registered office of the Company will be situate in

3rd.—The objects for which the Company is established are “the working of a patent method of _____, of which method *O. P.* of _____ is the sole patentee.”

We, the several persons whose names are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

- 1 *A. B.* of
- 2 *C. D.* of
- 3 *E. F.* of
- 4 *G. H.* of
- 5 *I. J.* of
- 6 *K. L.* of
- 7 *M. N.* of

Dated the _____ day of _____ 18 .

Witness to the above signatures.

Q. R. of

*Articles of Association to accompany the preceding Memorandum of Association⁽ⁱⁱ⁾.**Capital of the Company.*

The capital of the Company is twenty thousand rupees divided into twenty shares of one thousand rupees each.

Application of Table A.

All the articles of Table A⁽ⁱⁱⁱ⁾ shall be deemed to be incorporated with these articles, and to apply to the Company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, addresses, and descriptions of subscribers.	Number of shares taken by subscribers.
1 A. B. of	
2 C. D. of	
3 E. F. of	
4 G. H. of	
5 I. J. of	
6 K. L. of	
7 M. N. of	

Total shares taken

Dated the day of 18 .

Witness to the above signatures.

Q R. of

Form D, second schedule, English Act, 1862; and India Act, 1866.

(i) Sec. 10, *supra*, p. 9, and sec. 39, *supra*, p. 27.

(ii) Sec. 37, *supra*, p. 27.

(iii) See table A, *supra*.

FORM E.

As required by the second part of the foregoing Act(i).

Summary of capital and shares of the Com-
pany made up to the day of Nominal
capital Rs. divided into shares
of Rs. each.

Number of shares taken up to the day of

There has been called up on each share Rs.

Total amount of calls received Rs.

Total amount of calls unpaid Rs.

List of persons holding shares in the
Company on the day of and of persons
who have held shares therein at any time during the
year immediately preceding the said day of
showing their names and addresses and an
account of the shares so held.

[illegible]

Form E, second schedule, English Act, 1862.

Form E, second schedule, Indian Act, 1866.

(i) See sec. 48, *supra*, p. 42.

The English Act contains Form F, a license to hold lands, which is unnecessary in India, see p. 32, *supra*, and a third schedule containing repealed Acts. The Indian Act contained a third schedule containing repealed Acts, which is unnecessary, see sec. 2, *supra*, pp. 1, 2.

RULES made by the High Court of Judicature at Bombay, pursuant to section 189 of the Indian Companies' Act X. of 1866, [see sec. 254, supra.]

The rules made by the High Court of Judicature at Fort William, Bengal, pursuant to Act X. of 1866, sec. 189, are practically the same, but the differences between them and the Bombay rules will be found noted to the latter rules respectively.

Both sets of rules are modelled on the general orders of 11th November 1862, issued by the English Court of Chancery. These orders will be denoted by the letters G. O.

<i>Abstract of the Rules.</i>	RULES.
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Order to wind-up Company	6— 7
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Proof of Debts	19—26
List of Contributories	27—29
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Petition to wind-up Company.

Title of
Petition.

1. Every petition for the winding-up of any Company by the Court, or subject to the supervision of the Court, shall be intituled: In the matter of "the Indian Companies' Act, 1866," and of the Company to which such petition shall relate, describing the Company by its most usual style or firm.

G. O. rule 1, Bengal rule 1, *verbatim*.

Semble, all petitions, &c., should now be headed "In the matter of the Indian Companies' Act VI. of 1882."

Advertise-
ment of
Petition.

2. Every such petition shall be advertised 14 clear days before the hearing, as follows:—

(1) In the case of a Company whose registered office(i), or if there shall be no such office, then whose principal or last known principal place of business is, or was situate within the Island of Bombay, once in the *Bombay Government Gazette*, and once at least in two English *Daily Newspapers* and two *Native Newspapers* published in Bombay.

(2) In the case of any other Company, once in the *Bombay Government Gazette*, and once at least in two local newspapers, or if there should be none such, in two newspapers circulating in the district where such registered office or principal or last known principal place of business, as the case may be, of such Company, is or was situate, and also by proclamation affixed to the walls of the Court House.

The advertisement(ii), shall state the day on which the petition was presented, and the name and address of the petitioner, and of his Attorney (if any)(iii).

Fourteen days is here substituted for seven days in G. O. rule 2, and the Bengal rule 2. G. O. rule 2, *mutatis mutandis*. The Bengal rule, para. 1, provides for advertisement once in the *Calcutta Gazette*, and once at least in two

Calcutta daily newspapers ; in para. 2, once in the *Calcutta Gazette* or the *Gazette of India*, and where practicable, once at least in two newspapers circulating in the place where such registered office, or principal or last known principal place of business of such Company is or was situate, and also by proclamation affixed to the walls of the Court House.

- (i) See sec. 63, *supra*, p. 58.
- (ii) See form 1 in schedule hereto.
- (iii) See rule 70, *post*.

The seven days under G. O. rule 2, may be counted in the vacation, Buckley, 4th ed., 563, and case there cited. See further as to the practice under the rule there, *ibid.* (564, 565) and cases there cited.

3. Every such petition shall, unless presented by the Company, be served at the registered office (i) (if any) of the Company, and if no registered office, then at the principal or last known principal place of business of the Company, if any such can be found, upon any member, officer, or servant of the Company there, or in case no such member, officer, or servant can be found there, then by being left at such registered office or principal place of business, or by being served on such member or members of the Company as the Court may direct ; and every petition of the winding-up of a Company, subject to the supervision of the Court(ii) shall also be served upon the liquidator (if any) appointed for the purpose of winding-up the affairs of the Company.

G. O. rule 3, Bengal rule 3.

- (i) See sec. 63, *supra*, p. 58.
- (ii) See sec. 192, *supra*, p. 50.

This rule is directory, not imperative. See Buckley, 4th ed., 566, 567, and cases there cited.

4. Every petition for the winding-up of any Company by the Court, or subject to the supervision of the Court, shall be verified by an affidavit(i) referring thereto, in the form or to the effect set forth in form No. 2 in the second schedule hereto—such affidavit shall be made by the petitioner, or by one of the petitioners if more than one, or in case the petition is presented by the Company, by some director, secretary, or other principal officer thereof, and shall be made and filed within four days after the petition is presented, and such affidavit shall be sufficient *prima facie* evidence of the statements in the petition.

G. O. rule 4. The Bengal rule 4 is as follows: "Every petition for the winding-up of any Company by the Court, or subject to the supervision of the Court, shall be verified in the form or as nearly as may be to the effect set forth in form No. 2 to the schedule hereto. Such verification shall be made by the petitioner or by one of the petitioners (if more than one), [or if by reason of absence or other good cause any person by whom or on whose behalf such petition is presented is unable himself to verify the same, the Court may permit some other competent person to verify the petition]. In case the petition is presented by any Company, the allegations thereof shall be verified by some director, secretary or other principal officer thereof. Such verification shall be made and filed within four days after the petition is presented, and such verified statement shall be sufficient *prima facie* evidence of the statements in the petition."

The passage in brackets was added by the Calcutta High Court, and is in practically the same terms as sec. 28 of Act VIII. of 1859. Cf. sec. 51 of Act XIV. of 1882, Code of Civil Procedure.

(i) See rule 70, *post*.

The time for filing the affidavit may be enlarged; see the cases cited, Buckley 4th ed., 368.

Copies of
petition to
be supplied.

5. Every contributory or creditor of the Company shall be entitled to be furnished by the attorney to the petitioner with a copy of the petition within twenty-four hours after requiring the same, on paying at the rate of 8 annas per folio of 90 words for such copy.

G. O. rule 5. Bengal rule 5, provides that a copy of the petition is to be furnished "on payment of the usual and customary fees for copies of documents in such Court,"

ORDER TO WIND-UP COMPANY.

Advertise-
ment and
service of
petition.

6. Every order for the winding-up of a Company by the Court(i), or subject to its supervision(ii), shall within twelve days after the date thereof be advertised(iii) by the petitioner once in the *Bombay Government Gazette*, and shall be served upon such person (if any), and in such manner as the Court may direct.

G. O. rule 6. Bengal rule 6, provides for advertisement once in *Gazette of India*, and once in *Calcutta Gazette*.

(i) See secs. 131, 135, *supra*.

(ii) See sec. 191, *supra*.

(iii) Form of advertisement, see No. 5 *post*.

Proceedings
on order.

7. Within 10 days after any order for the winding-up of a Company has been sealed, a summons at

Chambers shall be taken out by the petitioner to proceed with the winding-up of the Company, and in default thereof such summons may be taken out by any other person interested in the winding-up to whom the Court may think fit to give the conduct and prosecution of the said order, and in either case such summons shall be served upon all parties who may have appeared upon the hearing of the petition. Upon the return of such summons a time shall, if the Court think fit, be fixed for the appointment of an official liquidator, (i) and for the proof of debts(ii), and for the list of contributories to be brought in(iii), and directions may be given as to the advertisement to be issued for all or any of such purposes, and generally as to the proceedings and the parties to attend thereon. The proceedings under the order shall be continued by adjournment, and when necessary, by further summons, and any such directions as aforesaid may be given, added to, or varied, at any subsequent time, as may be found necessary.

G. O. rule 7. Bengal rule 7, which provides that the petitioner shall apply for an order to proceed with the winding-up, and upon such application the Judge shall issue a summons for proceeding with the winding-up, &c.

- (i) See rule 9, *post*.
- (ii) See rules 19—26, *post*.
- (iii) See rules 27—29, *post*.

Official Liquidator(i).

8. The Court may appoint a person to the office of official liquidator without any previous advertisement, or notice to any party, or may fix a time and place for the appointment of an official liquidator, and may appoint or reject any person nominated at such time and place, and appoint any person not so nominated.

G. O. rule 8, Bengal rule 8.

- (i) See secs. 134, 141, 142, 185, 194, 196, *supra*.

The general practice is to direct a reference to Chambers as to the appointment of the official liquidator. IN *re General Financial Bank*, 20 Ch. Div., 276, *cited supra*.

9. When a time and place are fixed for the appointment of an official liquidator, such time and place shall be advertised in such manner as the

Appointment
of official
liquidator.

Advertise-
ment as to
appointment.

Court shall direct, so that the first or only advertisement shall be published within fourteen days and not less than seven days before the day so fixed(i).

G. O. rule 9; and Bengal rule 9.

(i) See forms 6 and 7 in schedule hereto.

Security of
official
liquidator.

10. Every official liquidator shall give security by entering into a recognizance with two or more sufficient sureties, or by depositing Government Securities in such sum as the Court may approve(i).

G. O. rule 10; and Bengal rule 10.

(i) See forms Nos. 10 and 11 in schedule, *post*.

Order
appointing
official
liquidator.

11. The official liquidator shall be appointed by Order(i); and unless he shall have given security, a time shall be fixed by such order within which he is to do so, and the order shall fix the times or period at which the official liquidator is to leave his accounts of his receipts and payments with the Court, and shall direct that all monies to be received shall be paid into the Bank of Bombay, or the Branch thereof nearest to the principal place of business of the Company, immediately after the receipt thereof to the account of the official liquidator of the Company, and an account shall be opened there accordingly(ii), and an office copy of the order shall be lodged at the Bank of Bombay, or branch thereof as aforesaid.

G. O. rule 11; Bengal rule 11, which substitutes "Bank of Bengal" for "Bank of Bombay."

(i) See forms No. 8 and 9 in schedules, *post*.

(ii) See rules 34-42, *post*, as to payment in and delivery out of monies, &c.

In the Bengal rule there follows rule 12, as follows:—"When an Official Liquidator has given security pursuant to the directions in the order appointing him the same shall be certified by the Judge or Registrar." This rule corresponds with G. O. rule 12, but has been omitted from the Bombay rules.

Fresh
security when
required.

12. The official liquidator shall on each occasion of passing his accounts(i), and also whensoever the Court may so require, satisfy the Court that his sureties are living, and resident in the Presidency of Bombay, and have not been adjudged bankrupt or become insolvent, and in default thereof he may be required to enter into fresh security, within such time as shall be directed.

G. O. rule 13; Bengal rule 13, substituting "Presidency of Bombay" for "British India" in the Bengal rule.

(i) See rule 18, *post*.

13. Every appointment of an official liquidator shall be advertised in such manner as the Court shall direct, immediately after he has been appointed and has given security(i). Advertisement of appointment made.

G. O. rule 14; and Bengal rule 14.

(i) See form No. 15 in schedule, *post*.

14. Where it is desired to appoint provisionally an official liquidator(i) an application for that purpose may at any time after the presentation of the petition for winding-up the Company be made by petition without advertisement as notice to any person unless the Court shall otherwise direct; and such provisional official liquidator may, if the Court shall think fit, be appointed without security. Provisional official liquidator.

G. O. rule 15, Bengal rule 15; substituting "Court" for "Judge" in those rules.

(i) See secs. 134 and 141, *supra*; also form 9 in schedule, *post*; and rule 54, *post*.

15. In case of the death, removal, or resignation of an official liquidator(i), another shall be appointed in his room, in the same manner as directed in the case of a first appointment; and the proceedings for that purpose may be taken by such party interested as may be authorized by the Court to take the same. Vacancy in office of official liquidator.

G. O. rule 16; Bengal rule 16; substituting "Court" for "Judge" in those rules.

(i) See secs. 185, 194, 196, *supra*.

16. The official liquidator shall, with all convenient speed after he is appointed proceed to make up, continue, complete, and rectify the books of account of the Company; and shall provide and keep such books of account as shall be necessary, or as the Court may direct, for the purposes aforesaid, and for showing the debts and credits of the Company, including a ledger which shall contain the separate accounts of the contributories, and in which every contributory shall be debited from time to time with the amount payable by him in respect of any call to be made as provided by the said Act and these Rules. Accounts.

G. O. rule 17; Bengal rule 17; substituting "Court" for "Judge" in those rules.

Remunera-
tion.

17. The official liquidator shall be allowed in his accounts, or otherwise paid such salary or remuneration as the Court may from time to time direct(i), including any necessary employment of assistants or clerks by the official liquidator, to which regard shall be had; and such salary or remuneration may either be fixed at the time of his appointment, or at any time thereafter as the Court may think fit. Every allowance of such salary or remuneration, unless made at the time of his appointment, or upon passing an account, shall be made upon application for that purpose by the official liquidator, on notice to such persons (if any) and supported by such evidence as the Court shall require, nevertheless the Court may from time to time allow any sum it may think fit to the official liquidator, on account of the salary or remuneration to be thereafter allowed.

G. O. rule 18. The Bengal rule 18 provides in the first para. "and the sum so fixed is to cover the expenses of the employment of assistants or clerks by the Official Liquidator, unless the Judge shall otherwise order." In the present rule "Court" is substituted for "Judge."

(i) See sec. 142, and note thereto, *supra*, p. 119.

Passing
accounts.

18. The accounts of the official liquidator shall be left with the Court at the times directed by the order appointing him(i), and at such other times as may from time to time be required by the Court, and such accounts shall, upon notice to such parties (if any) as the Court shall direct, be passed and verified in the same manner as receivers' accounts.

G. O. rule 19, which directs the accounts to be "left at Judge's Chambers"; Bengal rule 19, which directs them "to be filed in Court."

(i) See forms 8 and 9, *post*, sched.; and rule 11, *supra*.

Proof of Debts(i).

(i) As to debts generally and the proof of them see the note at foot of rule 26, *post*.

Advertise-
ment for
creditors.

19. For the purpose of ascertaining the debts and claims due from the Company and of requiring the creditors to come in and prove their debts or claims, an advertisement(i) shall be issued at such

time as the Court shall direct, and such advertisement shall fix a time for the creditors to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their attornies⁽ⁱⁱ⁾ (if any), to the official liquidator, and appoint a day for adjudicating thereon⁽ⁱⁱⁱ⁾.

G. O. rule 20 ; and Bengal rule 20, substituting " Court" for " Judge."

- (i) Form 16 sched. *post*.
- (ii) See rule 70, *post*.
- (iii) See sec. 156, *supra*.

20. The creditors need not attend upon the adjudication, nor prove their debts or claims, unless they are required to do so by notice from the official liquidator, but upon such notice being given, they are to come in and prove their debts or claims within a time to be therein specified. Attendance of creditors.

G. O. rule 21 ; and Bengal rule 21, which latter rule provides that creditors need not attend unless their claims are disputed ; and upon receiving notice that they are disputed they must come in and prove.

21. The official liquidator shall investigate the debts and claims sent into him, and ascertain, so far as he is able, which of such debts and claims are justly due from the Company, and he shall make out and leave with the Court a list of all the debts and claims sent in to him, distinguishing which of the debts and claims, or parts of debts and claims so claimed, are, in his opinion, justly due and proper to be allowed without further evidence, and which of them in his opinion ought to be proved by the creditors, and he shall make and file, prior to the time appointed for adjudication, an affidavit⁽ⁱ⁾ setting forth which of the debts and claims in his opinion are justly due, and proper to be allowed without further evidence, and stating his belief that such debts and claims are justly due and proper to be allowed, and the reasons for such belief. List of debts.

G. O. rule 22, which provides that the list of debts is to be left at the Chambers of the Judge ; and Bengal rule 22 which provides that it shall be filed in Court.

- (i) For form of affidavit see. Nos. 17, 18, schedule, *post*.

22. At the time appointed for adjudicating upon the debts and claims, or at any adjournment thereof, Allowance of debts.

the Court may either allow the debts and claims upon the affidavit of the official liquidator, or may require the same, or any of them, to be proved by the claimants and adjourn the adjudication thereon to a time to be then fixed, and the official liquidator shall give notice to the creditors whose debts or claims have been so allowed of such allowance(i).

G. O. rule 23; and Bengal rule 23, substituting "Court" for "Judge."

(i) See form No. 19 schedule, *post*.

Proof of
debts.

23. The official liquidator shall give notice(i) to the creditors whose debts or claims have not been allowed upon his affidavit that they are required to come in and prove(ii) the same by a day to be therein named, being not less than four days after such notice, and to attend at a time to be therein named, being the time appointed by the advertisement or by adjournment (as the case may be) for adjudicating upon such debts and claims.

G. O. rule 24; and Bengal rule 24.

(i) For form of notice see No. 20, sched. *post*.

(ii) For form of creditor's affidavit see No. 21, sched. *post*.

In the General Order there follows rule 25 as follows:—

25. The value of such debts and claims as are made admissible to proof by the 158th section of the said Act, shall, so far as is possible, be estimated according to the value thereof at the date of the order to wind-up the Company.

The Bengal rule 25 is as follows:—

25. The value of all contingent debts and claims admissible to proof shall, so far as is possible, be estimated according to the value thereof at the date of the order to wind-up the Company.

No such rule is contained in the Bombay rules. See the note at foot of rule 26, *post*.

Interest on
debts.

24. Interest on such debts and claims as shall be allowed shall be computed as to such of them as carry interest after the rate they respectively carry; any creditor whose debt or claim so allowed does not carry interest shall be entitled to interest after the rate of 6 per centum per annum, from the date of the order to wind-up the Company, out of any assets which may remain after satisfying the cost of the winding-up, the debts or claims established and

the interest of such debts or claims as by law carry interest.

G. O. rule 26, *verbatim*, save that "6 per centum" is substituted for "£4 per centum." Bengal rule 26 concludes at the words "after the rate they respectively carry."

"This rule is *ultra vires* and unauthorized by the Act," Buckley, 4th ed., p. 575, and the cases there cited. See in India *IN RE The New Fleming S. and W. Co.*, 1 L. R. 3 Bom. 439; [affirmed on appeal, 1 L. R. 4 Bom. 275,] where *Green, J.*, held that rule 24 of the Bombay rules is *ultra vires* so far as it allows interest on debts or claims subsequent to the date of the order to wind-up a Company whose debts or claims do not carry interest.

As to the payment of interest to creditors whose debts carry interest, see Buckley, 4th ed., 329.

25. Such creditors as come in and prove their debts or claims pursuant to notice from the official liquidator shall be allowed their costs of proof.

G. O. rule 27; Bengal rule 27.

26. The result of the adjudication upon debts and claims shall be settled by the Court⁽ⁱ⁾ from time to time as convenience may require, and shall state whether the debts or claims are allowed or disallowed, and whether allowed as against any particular assets, or in any other qualified or special manner.

G. O. rule 28 provides that the certificate shall be made by the Chief Clerk; Bengal rule 28 that it shall be signed by the Judge.

(i) For form of settlement by the Court of debts and claims, see No. 22 schedule; and for form of notice to creditors to attend to receive their debts, No. 23, schedule, *post*.

As has been observed (*supra*, p. 156), sec. 158 of the English Companies' Act, 1862, which is set out fully there, and which provides that debts of all descriptions may be proved, has been omitted from the Indian Act X. of 1866, and the present Act, "as being unnecessary, having regard to rules 20 to 28 (in Bengal) passed under the former Act of 1866." (Stokes, p. 65.)

The following matters will be found dealt with in the note to section 158 of the Companies' Act in Buckley, 4th ed.

1. What is admissible to proof, (pp. 312—318).
2. Contingent claims and set-off, (318—321).
3. Debentures, (321—325).
4. Secured creditors, (325—329).
5. Interest, (329—331).
6. Novation of contract including the cases on the point decided in the *Albert and European Arbitrations* respectively (331—345).

The following cases may be further referred to under the above headings:—

A debt incurred for a fraudulent purpose by a Company, *e.g.* monies placed at a bank in trust for the Company in order to enable the Company to have a fictitious credit in case of inquiries at their bankers, cannot be

What is admissible to proof.

proved in the winding-up, *IN RE Great Berlin Steam Boat Co.*, 26 Ch. Div., 616.

Invalid drawing or acceptance of bills, &c.

Although a Company under the Act cannot be made liable so far as third persons are concerned, on a bill or note unless such bill or note expresses that it was made, accepted or indorsed by, or on behalf, or on account of the Company, or unless that fact appears by necessary inference from what the instrument itself shows, *IN RE The New Fleming S. & W. Co.*, 1. L. R., 3 Bom., 439 (affirmed 1. L. R., 4 Bom., 275, and cited, *supra*) still proof in respect of such bill or note may be admitted on the ground that the Company represented its directors as having authority to draw, accept, or indorse the same, *IN RE New Fleming S. & W. Co.*, 1. L. R., 5 Bom., 92; with which compare *IN RE London and Mediterranean Bank*, ex parte *Birmingham Banking Co.*, 1. L. R., 3 Ch., 651.

Wages of servants.

See *IN RE Calcutta Steam Tug Association*, 2 Ind. Jur. N. S., 19, cited *supra*, p. 115, note to sec. 137.

Monies advanced to Company.

See *Parmanandas Jivandas v. Cormack*, 1. L. R., 6 Bom., 326, cited *supra*, p. 16.

Cost book mining Company.

As to the position of a retiring shareholder in a cost-book mining Company with respect to his contribution in case of its being wound-up, see *IN RE French Mills Co.*, 23 Ch. Div., 52; but there are no such Companies in India.

As to the right of proof against a Company in liquidation in respect of breaches of a continuing contract, see *Lee and Chapman's case*, 26 Ch. D., 624; where it was also held that the winding-up of the Company did away with the necessity of giving the notice to repair required by the contract.

2. *Set-off*.—In England sec. 10 of the Judicature Act 1875 has imported into the winding-up of Companies the rules as to set-off in bankruptcy; consequently where the liquidator of the appellant Company which was being wound-up, brought an action in the name of the Company for the price of certain goods delivered to the respondents, and the respondents counter-claimed for damages for breaches of contract for non-delivery the latter were held entitled, after the winding-up order was made, to set-off damages for non-delivery against the payments due from them, and to counter-claim for damages in the action, *Mersey Steel and Iron Co. v. Naylor Benzon and Co.*, 9 Ap. Ca., 431, affirming the decision in the Court of Appeal. 9 Q. B. Div., 646.

In India the Code of Civil Procedure does not provide for counter-claims; and sec. 111 of the present Code XIV. of 1852 which corresponds with sec. 111 of Civil Procedure Code X. of 1877 provides for set-off only where the defendant claims to set-off against the plaintiff's demand any *ascertained sum* legally recoverable from the plaintiff, and if in such claim of the defendant against the plaintiff both parties fill the same character as they do in the plaintiff's suit. But (under Act VIII. of 1859) it was held that the right of set-off exists not only in cases of mutual debts and credits, but also when the cross demands arise out of one and the same transaction, or are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross-action, *Clark v. Ratnavaloo Chatti*, 2 Mad., 296, followed in *Gawri Suhai v. Ram Suhai*, 7 All. 157. See also (under Act X. of 1877) *Kishorchund Champalal v. Madhorji Visram*, 1. L. R., 6 Bom., 407. And on this principle it was held in a suit on a contract that the defendants were entitled to set-off the amount of damages which they proved they had suffered by reason of the plaintiff's breach of the contract sued on, when such was the intention of the parties, *Kristnasamy Pillay v. Municipal Commissioner of Madras*, 4 Mad., 120. See further, *Radha Ram Deb v. James*, 20 W. R. (Suth.) 410.

A debt incurred to a Company after the commencement of the winding-up, i. e. the presentation of a petition for winding-up, cannot be set-off

against a debt due from the Company and incurred prior to the commencement of the winding-up, even though the contract in respect of which the former debt was incurred to the Company was entered into prior to the commencement of the winding-up. *Ince Hull Rolling Mills Co. v. Douglas Forge Co.*, 8 Q. B. D., 179. The two respective debts could not be said to be "mutual debts between the same parties and in the same interest," per *Watkin Williams, J.*, *ibid.*, see p. 183.

A right to retain monies payable under one contract to secure the due performance by a Company of that contract will not, in the event of the Company being wound-up, entitle the persons contracting with the Company to retain such monies as security for the performance by the Company of other contracts entered into by it although the contracts may be concurrent, *IN RE Asphaltic Wood Pavement Co., Lee and Chapman's case*, 26 Ch. D., 624. Retainer in respect of concurrent Contracts,

3. *Debentures*—See *IN RE Romford Canal Co.*, 24 Ch. D., 85, where the following propositions are laid down by *Kay, J.* :—

(a) When a Company have power to issue securities, an irregularity in the issue cannot be set up against even the original holder if he has a right to presume *omnia rite acta*: *Fountaine v. Carmarthen Ry. Co.*, L. R., 5 Eq., 316.

(b) If such security be legally transferable, such an irregularity, and *à fortiori*, any equity against the original holder, cannot be asserted against a *boni fide* transferee for value without notice. *Webb v. Commissioners of Herne Bay*, L. R., 5 Q. B., 642.

(c) Nor can such an equity be set up against an equitable transferee, whether the security was transferable at law or not, if by the original conduct of the Company in issuing the security, or by their subsequent dealing with the transferee, he has a superior equity: *IN RE Agra and Masterman's Bank*, L. R., 2 Ch., 591; *IN RE Blakely Ordnance Co.*, L. R., 3 Ch., 151; *Dickson v. Swansea, &c. Ry. Co.*, L. R., 4 Q. B., 44.

(d) If the original conduct of the Company in issuing the debentures is such that the public are justified in treating it as a representation that they are legally transferable, there is an equity on the part of any person who has agreed for value to take a transfer of the debentures to restrain the Company from pleading their invalidity, although that might be a defence at law to an action by the transferor. *Higgs v. Northern Assam Tea Co.*, L. R., 4 Ex., 387.

In the case before him, *Kay, J.* allowed the equitable transferees to recover only such a sum as each of them should prove he had *boni fide* advanced upon the debentures which he had received; while the legal registered transferee for value without notice of any irregularity in the issue of the debentures was held entitled to be paid the amount of them in full.

4. *Secured creditors*.—There is no enactment in India corresponding to sec. 10 of the Judicature Act 1875; therefore the proof of their debts by secured creditors are regulated by the principles applicable before the Judicature Act was passed, *i.e.* "Where a creditor of the Company holds security for his debt he is entitled to prove for the whole amount that is due to him at the time of sending in his claim, and not merely, as in bankruptcy, for the balance remaining due after realising or valuing his security." *Buckley*, 4th ed., 325, and cases there cited, and see *IN RE London, Bombay and Mediterranean Bank*, ex parte *Cama*, L. R., 9 Ch. 686.

As to the terms upon which a secured creditor will be entitled to come in and prove, after dividends have already been declared, see *IN RE Kit Hill Tunnel*, 16 Ch. D., 590, cited *supra*, 129.

Sec. 4 of the Indian Limitation Act (XV. of 1877) provides that "subject to the provisions in sections five to twenty-five inclusive every suit instituted after the period of limitation prescribed therefor by the second schedule hereto annexed, shall be dismissed, although limitation Statute of Limitation.

has not been set up as a defence. *Explanation.* A suit is instituted..... in the case of a claim against a Company which is being wound-up by the Court, when the claimant first sends in his claim to the official liquidator." The second schedule to the Act contains no reference to claims made against a Company when being wound-up, and the above explanation is entirely at variance with the English law on this point, which is, that the effect of a winding-up order constitutes the official liquidator a trustee of the Company's property for the creditors who were creditors at the time of the winding-up and the order prevents the statute of limitations from running against a creditor who neglects to prove his debt within the proper time, Buckley, 4th ed., 241 and 331, and *IN RE General Rolling Stock Co., Joint Stock Discount Co.'s claim*, L. R., 7 Ch., 646.

And this decision is in accordance with sec. 10 of the Limitation Act XV. of 1877 which excludes suits against express trustees and their representatives from the operation of the Act. See the section set out in the appendix, *post*.

List of Contributories(i).

(i) See sec. 61, 147, 148, *supra*.

List of Contributories.

27. The official liquidator shall, with all convenient speed after his appointment, or at such time as the Court shall direct, make out and leave with the Court a list of the contributories of the Company(ii); and such list shall be verified by the affidavit(iii) of the official liquidator, and shall, so far as is practicable, state the respective addresses of and the number of shares or extent of interest to be attributed to each such contributory and distinguish the several classes of contributories. And such list may, from time to time, by leave of the Court, be varied or added to by the official liquidator(iv).

G. O. rule 29 and Bengal rule 29, substituting "Court" for "Judge"; and in the English rule the list is to be left at the Chambers of the Judge, in the Bengal rule it is to be filed in Court.

(ii) See form of list of contributories, sched., *post*, No. 25.

(iii) See rule 70, *post*, and form No. 24, sched., *post*, for affidavit in support of list.

(iv) See form of order on application to vary the list No. 32, sched., *post*.

Notice of appointment to settle.

28. Upon the list of contributories being left with the Court, the official liquidator shall obtain an appointment for the Court to settle the same, and shall give notice(i) in writing of such appointment to every person included in such list, and stating in what character, and for what number of shares of interest such person is included in such list, and in case any variation or addition(ii) to such list shall at

any time be made by the official liquidator, a similar notice in writing shall be given to every person to whom such variation or addition applies. All such notices shall be served four clear days before the day appointed to settle such list or such variation or addition.

G. O. rule 30 and Bengal rule 30, which contain the words "shall obtain an appointment for the Judge to settle the same," &c.

(i) For form of notice see No 26, sched., *post*; and of affidavit of service Nos. 27, 28, sched., *post*.

(ii) For form of supplemental list of contributories and affidavit in support see Nos 29, 30, sched., *post*.

29. A list of contributories as the same shall have been settled by the Court shall from time to time (when the Court shall so order) be drawn up by the official liquidator and signed by the Court for the purpose of stating the result of such settlement down to any particular time, or as to any particular person or stating any variation of the list(i). Court's certificate.

G. O. rule 31 and Bengal rule 31, which provide that the result of the settlement of the list of contributories shall be stated in a certificate signed by the chief clerk (G. O.) or the Judge (Bengal rule), and such certificates may be made from time to time, &c.

(i) For form see No. 31, sched., *post*.

Sales of Property(i).

(i) See sec. 144, *supra*, p. 120.

30. Any real or personal property belonging to the Company may be sold with the approbation of the Court in the same manner as in the case of a sale under a decree or order of the Court in a suit or if the Court shall so direct by the official liquidator, in which case the conditions or contracts of sale shall be settled and approved of by the Court, unless it shall otherwise direct, and unless on account of the small amount of the purchase money or other cause, it shall, having regard to the amount of the security given by the official liquidator, be thought proper that the purchase monies shall be paid to him; all conditions and contracts of sale shall provide that the purchase monies shall be paid by the respective purchasers into the Bank of Bombay or the branch thereof nearest to the principal place

of business of the Company to the account of the official liquidator of the Company(ii).

G. O. rule 32, which provides for the Judge approving the sale and conditions, &c., and directs that the conditions, &c., may, if the Judge thinks fit, be submitted to one of the conveying counsel of the Court.

Bengal rule 32 substitutes "moveable and immoveable property" for "real and personal," in accordance with the prevailing description in India; omits the direction that the sale shall be in the same manner as in the case of a sale under a decree or order of the Court in a suit; directs that the Judge, on a sale by public auction, may fix a reserved bidding; and substitutes "Bank of Bengal" for "Bank of Bombay" in this rule.

(ii) See sec. 152, *supra*, p. 127. For form of direction to open an account at the Bank, see form No. 14, schedule, *post*.

Calls(i).

(i) See sec. 151, *supra*, p. 127. For form of liquidator's affidavit in support form No. 33, *post*.

Summons
for call.

31. Every application to the Court to make any call on the contributories or any of them, for any purpose authorized by the said Act shall be made by summons(i), at Chambers, stating the proposed amount of such call: and such summons shall be served four clear days at the least before the day appointed for making the call on every contributory proposed to be included in such call, or if the Court shall so direct, notice of such intended call may be given by advertisement or such other public notification as the Judge in his discretion may think sufficient(ii).

G. O. rule 33, which substitutes "Judge" for "Court"; Bengal rule 33 substitutes "petition" for "summons."

(i) See form No. 34, schedule, *post*.

(ii) See form No. 35, schedule, *post*. As to service of summons, &c., see rule 58, *post*.

Service of
order.

32. When any order(i) for a call has been made a copy thereof shall be forthwith served upon each of the contributories included in such call, together with a notice(ii) from the official liquidator specifying the amount or balance due from such contributory having regard to the provisions of the said Act in respect to such call; but such order need not be advertised unless for any special reason the Court shall so direct.

G. O. rule 34; Bengal rule 34.

(i) See form No. 36, schedule, *post*.

(ii) See form No. 37, schedule, *post*.

33. At the time of making an order for call, the further proceedings relating thereto shall be adjourned to a time subsequent to the day appointed for the payment thereof, and afterwards from time to time so long as may be necessary, and at the time appointed by any such adjournment, or upon a summons at Chambers to enforce payment of the call duly served, and upon proof of the service of the order and notice of the amount due, and non-payment (i), an order (ii) may be made for such of the contributories who have made default, or such of them against whom it shall be thought proper to make such order. to pay the sum which by such former order and notice they were respectively required to pay, or any less sum which may appear to be due from them respectively.

Proceedings under order.

G. O. rule 35; Bengal rule 35.

(i) See form No. 38, schedule, *post*, affidavit in support of application.

(ii) See form No. 39, and affidavit of service, see note to form 38, schedule, *post*.

By an order of the Court of Chancery made in the winding-up of the plaintiff's Bank it was ordered that service of any notice, summons, order or other proceedings in the winding-up might be effected by putting such notice, &c., into any post office either in England or at Bombay, duly addressed to contributories, being past members, according to their respective *last known addresses or places of abode*. By a final balance order, dated 5th June 1879, it was ordered by the Court of Chancery that the persons named in the schedule to the said order being contributories as past members of the said Bank should, within four days after the service of the said order, pay the amount set opposite to their names with interest from the 5th March 1879. The defendant's name appeared in the schedule, and the present suit was brought to recover the sum therein appearing due from him to the Bank. The defendant denied that he had ever held shares in the plaintiff's Bank, or that he had ever had notice of any of the proceedings in the winding-up. At the trial it appeared that all the various orders and notices to shareholders made in the winding-up previous to the balance order of 5th June 1879, had been sent by post to the defendant, addressed to him at No. 36, Fanasvadi, and were all returned undelivered. It was proved that he had never resided there, but that his brother had a place of business there, and that the defendant used occasionally to go there to attend on his brother's business. It further appeared that the defendant's residence, as given in the register of shareholders, was Loharchall, and not 36, Fanasvadi.

"Last known address or place of abode."

It was held by *West, J.*, that the notices, orders, &c., prior to the 5th June 1879, were not so served as to make the defendant subject to that final order; that the obligation to obey the command of the Court of Chancery therein contained had not arisen as against the defendant; and that, consequently, the suit must fail. That it is a leading principle of English law, always understood, except when expressly excluded, that persons proceeded against in a Court must have due notice of the proceed-

ing. Failing such notice, he is entitled to protection if the judgment or order obtained in his absence is made the ground of a suit in any Court governed by English principles. That the Court of Chancery had not in this case so called the defendant before it as to enable it in his absence to pronounce a definitive order against him, or to bind him in the Court of his domicile, though he was included in the order of the Court of Chancery.

The fact that the defendant frequently attended his brother's place of business at No. 36, Fanaasvadi, was not enough to make that place his "last known address." Had there been evidence that he had used No. 36, Fanaasvadi, as an address for receiving letters, that probably might have been sufficient. It would then have been known as his address, or at least, as an address. *London, Bombay, and Mediterranean Bank v. Gorind Ramchandra*, 1. L. R., 5 Bom., 223. See this case further cited, *supra*.

Service of
balance order
not necessary.

In a suit against a contributory in a Company being wound-up under an order of the Court of Chancery in England, service of the order on the defendant is unnecessary and forms no part of the cause of action. Where, therefore, a contributory though served with such order in Bombay, does not dwell, or carry on business, or personally work for gain within the jurisdiction of the High Court at the time of the filing of the plaint, the High Court has no jurisdiction to entertain a suit against such a contributory; though leave to sue has been obtained under cl. 12 of the Letters Patent, 1865. *London, Bombay, and Mediterranean Bank v. Bude Bebee*, 1. L. R., 5 Bom., 42. See Buckley, 4th ed., 578.

Suit against
wrong person.

A suit brought against a wrong person as a contributory should be dismissed, and if he has done nothing to mislead the plaintiffs he is entitled to his costs. *London, Bombay, and Mediterranean Bank v. Mahomed Ibrahim Parker*, 1. L. R., 4 Bom., 619.

A balance order
not a "final
judgment"
within the
meaning of
Sub sec. 1 (g)
of sec. 4 of the
Bankruptcy
Act 1883 (46 and
47 Vic., c. 52.)

A balance order made in the voluntary winding-up of a Company on a contributory for payment of calls which had been made upon him before the commencement of the winding-up, is not a "final judgment" within the meaning of sub-sec. 1 (g) of sec. 4 of the Bankruptcy Act, 1883; and therefore a bankruptcy notice cannot be issued in respect of such an order. *Ex parte Whitney In re Sanders*, 13 Q. B. D., 476. See also *ex parte Chinery*, 12 Q. B. Div., 342.

Payment in of monies and deposit of securities(i).

Default of
payment into
Bank.

34. If any official liquidator shall not pay all the monies received by him into the Bank of Bombay or the branch thereof nearest to the principal place of business of the Company to the account of the official liquidator of the Company, within seven days next after the receipt thereof, unless the Court shall have otherwise directed, such official liquidator shall be charged in his account with rupees ten for every thousand rupees and a proportionate sum for any larger amount retained in his hands beyond such period for every seven days during which the same shall have been so retained and the Court may, for any such retention, disallow the salary or remuneration of such official liquidator.

G. O. rule 36, substituting "Judge" for "Court" and "ten shillings" and "£100" for "rupees ten" and "thousand rupees" respectively, and "Bank of England" for "Bank of Bombay"; and Bengal rule 36, substituting "Judge" for "Court" and "five rupees" for "ten rupees," and "Bank of Bengal or the Court" for "Bank of Bombay or the Branch nearest," &c.

(i) See sec 153, *supra*, p. 123; and sec rule 11, *supra*; and form No. 14, sched., *post*.

35. All bills, notes and other securities payable to the Company or to the official liquidator thereof shall, as soon as they shall come to the hands of such official liquidator, be deposited by him in the Bank of Bombay, or the branch thereof nearest to the principal place of business of the Company, for the purpose of being presented by the Bank for acceptance and payment, or for payment only, as the case may be. Bills, &c., to be deposited in Bank.

G. O. rule 37, substituting "Bank of England" for "Bank of Bombay or the Branch," &c. Bengal rule 37 includes "hundis"; directs the deposit to be made in the "Bank of Bengal or the Court"; and concludes "or shall be dealt with as the Court shall otherwise order."

36. All orders for payment of calls, balances, or other monies due from any contributory or other person shall direct the same to be paid into the Bank of Bombay or Branch thereof as aforesaid, to the account of the official liquidator of the Company unless, on account of smallness of the amount or other cause, it shall, having regard to the amount of the security given by the official liquidator, be thought proper to direct payment thereof to the official liquidator; provided that where any such an order has been made directing payment of a specific sum into the Bank of Bombay or Branch thereof as aforesaid, in case it shall be thought proper for the purpose of enabling the official liquidator to issue execution or take other proceedings to enforce (i) the payment thereof, or for any other reason, an order may, either before service of such former order or after the time thereby fixed for payment, be made, without notice for the payment of the same sum to the official liquidator. Calls, &c., to be paid into Bank.

G. O. rule 38, substituting "Bank of England" for "Bank of Bombay or Branch as aforesaid"; Bengal rule 38,

substituting "Bank of Bengal or into Court" for "Bank of Bombay or Branch as aforesaid."

(i) See secs. 152 and 166, *supra*.

Notice as to
payment into
Bank.

37. At the time of the service of any order for payment into the Bank of Bombay or Branch thereof as aforesaid, the official liquidator shall give to the party served a notice to the purport or effect set forth in form No. 40 in the second schedule hereto, for the purpose of informing him how the payment is to be made, and before the time fixed for such payment, the official liquidator shall furnish the cashier of the Bank of Bombay or Branch thereof as aforesaid, with a certificate to the purport or effect set forth in form No. 41 in the second schedule hereto to be signed by such Cashier and delivered to the party paying in the money therein mentioned.

G. O. rule 39, substituting "Bank of England" for "Bank of Bombay and Branch," &c. This rule has been omitted from the Bengal rules.

Affidavit of
non-payment.

38. For the purpose of enforcing any order for payment of money into the Bank of Bombay or Branch thereof as aforesaid, an affidavit of the official liquidator to the purport or effect set forth in the form No. 43 in the second schedule hereto, shall be sufficient evidence of the non-payment thereof.

G. O. rule 40, substituting "Bank of England" for "Bank of Bombay," &c. This rule has been omitted from the Bengal rules.

Title of
account in
Bank.

39. All monies, bills, hundis, notes, and other securities, paid and delivered into the Bank of Bombay or Branch thereof as aforesaid, shall be placed to the credit of account of the official liquidator of the Company; and orders for any such payment and delivery shall direct the same accordingly.

G. O. rule 41, substituting "Bank of England" for "Bank of Bombay," &c.; and Bengal rule 39, substituting "Bank of Bengal or into Court" for "Bank of Bombay," &c.

Delivery out of Securities and Payment out, and Investment of, Monies(i).

(i) See sec. 153, *supra*, p. 128; and form No. 14, second schedule, *post*.

Requests
and cheques.

40. All bills, hundis, notes and other securities delivered into the Bank of Bombay or Branch

thereof as aforesaid, shall be delivered out upon a request signed by the official liquidator, and countersigned by the Judge or one of the Judges of the Court; and monies placed to the account of the official liquidator shall be paid out upon such cheques or orders signed by the official liquidator and countersigned by the Judge or one of the Judges of the Court.

G. O. rule 42, substituting "Bank of England" for "Bank of Bombay," &c., and "Chief Clerk of the Judge" for "Judge or one of the Judges," &c.; and Bengal rule 40, omitting "or one of the Judges," &c., and substituting "or the Registrar under the orders of the Court," and "Bank of Bengal or into Court" for "Bank of Bombay," &c.

41. All or any part of the money for the time Investment. being standing to the credit of the account of the official liquidator at the Bank of Bombay, or Branch thereof as aforesaid, and not immediately required for the purposes of winding-up may be invested in the purchase of Government Promissory Notes bearing interest in the name of the official liquidator. All such investments shall be made by the Bank of Bombay upon a request⁽ⁱ⁾ signed by the official liquidator and countersigned by the Judge or one of the Judges of the Court, and which request shall be a sufficient authority for debiting the account with the purchase money; and such Government Notes shall be retained by or deposited with the Bank of Bombay in the name and on behalf of the official liquidator, and such notes shall not afterwards be sold or transferred or otherwise dealt with except upon a direction for that purpose signed by the official liquidator and countersigned by the Judge or one of the Judges of the Court or under an order made by the Court.

G. O. rule 43 provides for investment in Annuities or Exchequer Bills, substitutes "Bank of England" for "Bank of Bombay," &c., and provides that the chief clerk of the Judge shall countersign. Bengal rule 41 substitutes "Bank of Bengal or into Court" for "Bank of Bombay," &c., and omits the words "or one of the Judges of the Court."

(i) For form of request see No. 44, second schedule, *post*.

42. All dividends and interest to accrue due Receipt of from any such notes shall from time to time be dividends.

received by the Bank of Bombay under a power of attorney to be executed by the official liquidator, and placed to the credit of the account of such official liquidator, and when any of such notes shall become payable the same shall be renewed or the principal and interest due thereon be received and placed to the credit of the account of the official liquidator.

See G. O. rule 44; Bengal rule 42 substitutes "Bank of Bengal or the Court" for "Bank of Bombay," and omits the direction for renewal.

Meetings of Creditors or Contributories.

Notice.

43. When the Court shall direct a meeting of the creditors or contributories of the Company to be summoned under the 112th or 165th(i) section of the said Act, the official liquidator shall give notice(ii) in writing seven clear days before the day appointed for such meeting, to every creditor or contributory of the time and place appointed for such meeting, and of the matter upon which the Court desires to ascertain the wishes of the creditors or contributories, or if the Court shall so direct, such notice may be given by advertisement, in which case the object of the meeting need not be stated, and it shall not be necessary to insert such advertisement in the *Bombay Government Gazette*.

G. O. rule 45, substituting "91st and 149th section" for "112th or 165th," and "*London Gazette*" for "*Bombay Government Gazette*." Bengal rule 43 concludes at the words "need not be stated."

(i) See sec. 140, *supra*, p. 116, and sec. 193, *supra*, p. 151.

(ii) See form No. 45, in second schedule, *post*.

Votes.

44. The votes of the creditors or contributories of the Company at any meeting summoned by the direction of the Court may be given either personally or by proxy(i); but no creditor shall appoint a proxy who is not a creditor of the Company whose debt or claim has been allowed, and no contributory shall appoint a proxy who is not a contributory of the Company.

G. O. rule 46; Bengal rule 44 concludes at the words "personally or by proxy."

(i) For form of appointment of proxy, see No. 46, second schedule, *post*.

45. The direction of the Court for any meeting of creditors or contributories under the 112th or 165th(i) section of the said Act, and the appointment of a person to act as Chairman of any such meeting shall be testified by a memorandum(ii) signed by the Judge or one of the Judges of the Court. Memorandum as to calling meeting.

G. O. rule 47, substituting "Judge" for "Court" and "Chief Clerk of the Judge" for "Judge or one of the Judges," &c. Bengal rule 45 substitutes "Judge" for "Court" and "or by the Registrar under the direction of the Judge" for "or one of the Judges of the Court."

(i) See sec. 140, *supra*, p. 116, and sec. 193, *supra*, p. 151.

(ii) Form No. 47, second schedule, *post*, memorandum; No. 48, *ibid.*, Chairman's report.

Direction or sanction of the Court.

46. The sanction of the Court to the drawing, accepting, making and endorsing of any bill of exchange, hundi or promissory note by any official liquidator(i), shall be testified by a memorandum(ii) on such bill of exchange or promissory note signed by the Judge or one of the Judges of the Court. Sanction to bills of exchange, &c.

G. O. rule 48, substituting "Judge" for "Court" and "Chief Clerk of Judge" for "Judge or one of the Judges," &c. Bengal rule 46, substituting "Judge" for "Court" and "or Registrar under the direction of the Judge" for "one of the Judges," &c.

(i) Form No. 49, second schedule, *post*.

47. Every application for the sanction of the Court to a compromise with any contributory or other person indebted to the Company(i) shall be supported by the affidavit(ii) of the official liquidator that he has investigated the affairs of such contributory or person, and stating his belief that the proposed compromise will be beneficial to the Company, and his reasons for such belief; and the sanction of the Court thereto shall be testified by a memorandum(iii) signed by the Judge or one of the Judges of the Court on the agreement of compromise(iv) unless any party shall desire to appeal from the decision of the Court, in which case an order shall be drawn up for that purpose. Compromise.

G. O. rule 49 and Bengal rule 47, which substitute "Judge" for "Court," and the English rule provides for signature of the memorandum by the chief clerk of the Judge: Bengal rule omits "or one of the Judges," &c.

(i) See sec. 202, *supra*, p. 157.

(ii) See rule 70, *post*.

(iii) See form No. 51, second schedule, *post*.

(iv) See form No. 50, second schedule, *post*.

Other cases.

48. The direction or sanction of the Court for any other proceeding or act to be taken or done by the official liquidator(i) shall be obtained upon summons and an order(ii) shall be drawn up thereon, unless the Court shall otherwise direct.

G. O. rule 50, substituting "Judge" for "Court." Bengal rule 48 substitutes "petition" for "summons," and omits "and an order," &c.

(i) See secs. 144, 146, and 201, *supra*.

(ii) See form No. 52, second schedule, *post*.

Application to the Court under ss. 153rd, 154th, 157th, and 187th of the Act(i).

Application
how made.

49. Every application under the 153rd, 154th, or 156th section of the said Act shall be made by petition, or if the Court shall so direct by summons at Chambers, and every application under the 187th section of the said Act shall be made by petition.

See G. O. rule 51; Bengal rule 49 provides for all these applications being made by *petition*.

(i) The corresponding sections in the present Act are sec. 181, *supra*, p. 145, s. 182, *supra*, p. 145, which alters this rule and enables application under it to be made *by motion*; s. 185, *supra*, p. 146, and sec. 216, *supra*, p. 171 respectively.

G. O. rule 52 as to drawing up of orders is omitted.

Advertisements.

Insertion of
advertisements.

50 When an advertisement is required for any purpose except where otherwise directed by these rules the advertisement shall be inserted once in the *Bombay Government Gazette* and in such other newspaper or newspapers, and for such number of times as may be directed. The Judge, however, may, in such cases as he shall think fit, dispense with any advertisement required by these Rules.

G. O. rule 53, substituting "*London Gazette*" for "*Bombay Government Gazette*." Bengal rule 50 provides that "the advertisement, except when otherwise directed by

these rules, shall be published as the Judge shall direct, or it may take the form of a public notification or proclamation."

In England, here follows rules 54 as to admission of documents as follows:—

"54. Any party to any proceeding in Court or Chambers relating to the winding-up of a Company may, by notice in writing in the Form No 6 in Schedule N. to the Consolidated General Orders, or to the like effect, call on any other party thereto competent to admit the same, to admit any document, saving all just exceptions; and in case of refusal or neglect so to admit, the costs of proving such document shall be paid by the party so refusing or neglecting, unless the Judge shall be of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice shall have been given, except in cases where the omission to give such notice has been, in the opinion of the taxing master, a saving of expense." A corresponding rule (51) was included in the Bengal rules with a form of notice to admit. The rule and form above referred to have been omitted from the Bombay rules. As to notice to admit documents see sec. 128 of the Civil Procedure Code XIV. of 1882, and the form at p. 130 of O'Kinealy's work on that Code.

Affidavits.

51. Where an order shall have been made for the winding-up of any Company, any person intending to use any affidavit⁽ⁱ⁾ in any proceeding under such order, shall file the same in Court, and give notice thereof to the official liquidator. The person other than the official liquidator filing the affidavit⁽ⁱ⁾ shall not be required to take an office copy thereof, but an office copy thereof shall be taken by the official liquidator, and he shall produce the same at the hearing of any application or proceeding upon which it is intended to be used unless the Court shall otherwise direct.

Filing and Office copies of affidavits.

G. O. rule 55 provides for the filing of affidavits in the "Record and Writ Clerk's office," otherwise corresponds to this rule. Bengal rule 52 concludes with the words "notice thereof to the official liquidator."

G. O. rule 56 as to chief clerk's certificates is omitted.

(i) See rule 70, *post*.

Register and File of Proceedings.

52. A Register shall be kept by the Court of all proceedings in each matter in a book set apart for that purpose.

Register of proceedings.

Cf. G. O. rule 57. Bengal rule 53, after the words "proceedings," concludes thus: "before the Court in each matter with proper dates, so that all the proceedings may appear consecutively and in chronological order, with a short state-

ment of the questions or points decided, or ruled at every hearing."

File of
proceedings.

53. All orders, exhibits, admissions, memorandums and office copies of affidavits, examinations, depositions, and certificates, and all other documents relating to the winding-up of any Company shall be filed by the official liquidator, as far as may be in one continuous file, and such file shall be kept by him or otherwise as the Court may from time to time direct. Every contributory of the Company and every creditor thereof whose debt or claim has been allowed, shall be entitled at all reasonable times to inspect such file free of charge, and, at his own expense to take copies or extracts from any of the documents comprised therein, or to be furnished with such copies or extracts at a rate not exceeding 8 annas per folio of ninety words, and such file shall be produced in Court, or before the Judge in Chambers, and otherwise as occasion may require.

G. O. rule 58, substituting "Judge" "for Court" in the first para., and fixing a price of "three halfpence per folio of seventy-two words" for copies, and omitting "in Chambers" after "Judge" in the last para.

This rule is omitted from the Bengal rules.

Provisional Official Liquidator(i).

(i) See secs. 134, 141, *supra*; and form No. 9 in second schedule, *post*.

54. All the above rules relating to official liquidators shall, so far as the same are applicable and subject to the directions of the Court, in each case, apply to provisional liquidators.

G. O. rule 59; Bengal rule 54, substituting "Judge" for "Court."

Attendance and Appearance of Parties.

Attendance
of parties.

55. Every person for the time being on the list of contributories of the Company⁽ⁱ⁾ left with the Court by the official liquidator, and every person having a debt or claim against the Company allowed by the Court, shall be at liberty at his own expense to attend the proceedings before the Court, and shall be entitled upon payment of the costs occasioned thereby to have notice of all such proceedings as he shall by written request desire to have notice of,

but if the Court shall be of opinion that the attendance of any such person upon any proceeding has occasioned any additional costs which ought not to be borne by the funds of the Company, it may direct such costs or a gross sum in lieu thereof to be paid by such person, and such person shall not be entitled to attend any further proceedings until he has paid the same.

G. O. rule 60, substituting "left at the Chambers of the Judge" for "left with the Court"; Bengal rule 56 has "filed in Court" for those words, and those rules substitute "Judge" for "Court" in this rule.

(i) See rule 27, *supra*.

Under this rule in England it was held that admitted creditors of a Company in course of winding-up have not a general right to attend an examination of witnesses before an examiner summoned under sec 115 of the Companies' Act, 1862 [see sec. 162, *supra*, p. 131]. But the Court in its discretion may allow the attendance. "Proceedings" in this rule do not include an examination before an examiner which is strictly of private character, *IN RE Grey's Brewery Co.*, 25 Ch. D., 400.

An alleged creditor of a Company which was being wound up was not allowed to be present at the examination of an officer of the Company; the summons for such examination having been obtained by the official liquidator with a view to obtaining information as to the circumstances under which the claim of the alleged creditor arose. *IN RE Norwich Equitable Fire Insurance Co.*, 27 Ch. Div., 515.

56. The Court may from time to time appoint any one or more of the contributories or creditors as it thinks fit to represent before it, at the expense of the Company, all or any class of the contributories or creditors upon any question as to a compromise with any of the contributories or creditors, or in and about any other proceedings before it, relating to the winding-up of the Company, and may remove the person or persons so appointed. In case more than one person shall be so appointed they shall unite in employing the same attorney(i) to represent them. Appointment of representative party.

G. O. rule 61; Bengal rule 57, substituting "Judge" for "Court"; the latter rule also inserts the words "pleader or agent" after "attorney."

(i) See rule 70, *post*.

57. No contributory or creditor shall be entitled to attend any proceedings before the Court unless and until he has entered in a Book(i) to be kept for that purpose, his name and address and the name and address of his attorney(ii) (if any) and upon any change Particulars to be given before attendance.

of his address or of his attorney, his new address, and the name and address of his new attorney.

G. O. rule 62, substituting "at the Chambers of the Judge" for "before the Court," and "solicitor" for "attorney." Bengal rule 58, substituting "Judge" for "Court," and adding "pleader or agent" after "attorney."

(i) See form No. 53, second schedule, *post*.

(ii) See rule 70, *post*.

Service of Summonses, Notices, &c.

Service how
effected.

58. Services upon contributories and creditors shall be effected, except when personal service is required, by sending the notice, or a copy of the summons or order or other proceedings, through the post in a prepaid letter, addressed to the attorney of the party to be served (if any) or otherwise to the party himself at the address entered or last entered pursuant to the preceding rule; or if no such entry has been made then, if a contributory, to his last known address or place of abode, and if a creditor to the address given by him pursuant to the foregoing rule 19, and such notice or copy summons, order, or other proceeding shall be considered as served at the time the same ought to be delivered in due course of delivery by the Post Office, and notwithstanding the same may be returned by the Post Office.

G. O. rule 63; Bengal rule 59, adding "pleader or agent" after "attorney," which omits the sentence "and notwithstanding," &c.

"*Last known address or place of abode*"; see *London, Bombay, and Mediterranean Bank v. Gorind Ramchandra*, 1. L. R., 4 Bom., 223, fully cited *supra*, note to rule 32. As to service on *the Company*, see sec. 89, 90 *supra*, pp. 79, 80. See also Buckley, 4th ed., 586, note to rule 63 and cases there.

Name of
person
in complete.

59. No service under these rules shall be deemed invalid by reason that any name other than the surname of the person (if the said person be a European) or any name other than the final name ordinarily used by the person (being other than a European) on whom service is sought to be made, has been omitted, or designated by initial letters, in the list of contributories or in the summons order, notice, or other document, wherein the name of such

contributory or creditor is contained, provided the Court is satisfied that such service is in other respects sufficient.

See G. O. rule 64. This rule is omitted from the Bengal rules.

Termination of Winding-up(i).

(i) See secs. 159, 160, 161. *supra*, pp. 130, 131.

60. Upon the termination of the proceedings for the winding-up of any Company, a balance sheet shall be brought in by the official liquidator of his receipts and payments, and verified by his affidavits(i); and the official liquidator shall pass his final account, and upon payment by the official liquidator of the balance (if any) in such manner as the Court shall direct, the recognizances entered into by the official liquidator and his sureties may be vacated(ii).

Proceedings
on termination.

G. O. rule 65 and Bengal rule 60, which also provide that "the balance (if any) due on the final account shall be certified" (the Bengal rule adds) "by the Judge."

(i) See rule 70, *post*.

(ii) For form of declaration that the Company has been fully wound-up see form No. 55, second schedule, *post*.

61. When the official liquidator has passed his final account, and the balance (if any)(i) due thereon has been paid in such manner as the Court shall direct, the official liquidator shall(ii) in case the Company has not been already dissolved, apply to the Court for an order(iii) that the Company be dissolved from the date of such order.

Dissolution
of Company.

See G. O. rule 66; Bengal rule 61.

(i) G. O. rule 66 here adds "certified to be due thereon has been paid in such manner as the Judge shall direct, a certificate shall be made by the chief clerk that the affairs of the Company have been completely wound-up"; Bengal rule 61 adds "certified to be due thereon has been paid in such manner as the Court shall direct, a certificate shall be made by the Judge that the affairs of the Company have been completely wound-up."

(ii) G. O. rule 66 continues: "and in case the Company has not been already dissolved the official liquidator shall, immediately after such certificate has become binding, apply to the Judge for an order that the Company shall be dissolved from the date of such order." Bengal rule 61 continues: "and in case the Company has not been already dissolved the official liquidator shall, immediately after the issue of such certificate apply to the Judge for an order that the Company be dissolved from the date of such order." The form of certificate is No. 55 in schedule to G. O., see Buckley, 4th ed., p. 611, to which No. 48 in schedule to Bengal rules corresponds. See form No. 55 in second schedule, *post*.

(iii) For form of order see No. 55, second schedule, *post*.

As to close of winding-up by the Court see secs. 159, 161, *supra*, pp. 130, 131, and of voluntary winding-up, secs. 186, 187, and under supervision sec. 195, *supra*.

62. When the proceedings for winding-up any Company have been completed, the file of proceedings(i) and the book containing the official liquidator's account, shall be deposited in the records of the Court.

G. O. rule 67, substituting "Record and Writ Clerk's office" for "Records of the Court." Bengal rule 62 provides that "all books, papers and documents belonging or appertaining to the Company, and the book containing the official liquidator's account, shall be deposited in Court."

(i) See rule 53, *supra*.

By sec. 171, *supra*, p. 156, in voluntary winding-up the books, &c., shall be disposed of as the Company by extraordinary resolution directs.

Duties of Solicitors of Official Liquidator.

Duties of
Solicitor.

63. The attorney, or in Courts other than the High Court, the vakeel of the official liquidator shall conduct all such proceedings as are ordinarily conducted by attorneys of the High Court, or by vakeels in such other Courts; and where the attendance of his attorney or vakeel is required on any proceedings in Court or Chambers, the official liquidator need not attend in person, except in case where his presence is necessary in addition to that of his attorney or vakeel, or the Court shall direct him to attend.

G. O. rule 68, omitting "or in Courts other than the High Court," &c.

In Bengal rules this rule is omitted.

Forms.

Forms.

64. The forms set forth referred to in the second schedule to these orders, with such variations as the circumstances of each case may require, may be used for the respective purposes mentioned in such schedule.

G. O. rule 69; Bengal rule 63.

Fees.

Solicitor's
fees.

65. Attorneys and vakeels shall be entitled to charge and be allowed the fees set forth and

referred to in the first schedule hereto, unless the Court shall otherwise specially direct.

G. O. rule 70. This rule is omitted in Bengal rules.

G. O. rule 71 as to Court fees is omitted in Bombay and Bengal rules, being provided for by the Court Fees Act VII. of 1870.

Taxation of Costs.

66. Where an order is made by the High Court in Court or in Chambers for payment of any costs, the order shall direct the taxation thereof by the taxing officer; except in cases where a gross sum in lieu of taxed costs is fixed by the order. Taxation of costs.

G. O. rule 72; Bengal rule 64.

Power of Court.

67. The power of the Court to enlarge or abridge the time for doing any act, or taking any proceeding, to adjourn, or review any proceeding, and to give any direction as to the course of proceeding, is unaffected by these rules. General power of Court.

G. O. rule 73, substituting "Judge" for "Court." This rule is omitted from the Bengal rules.

As to enlargement of time see Buckley, 4th ed., 568, note to rule 4.

Leaving Accounts, &c.

68. All accounts, lists, notices, and other documents directed by these rules to be left with the High Court shall be left with the prothonotary of the Court. Accounts &c. to be left with Prothonotary.

This rule is in the Bombay rules only.

General Directions.

69. The general practice of the Court, including the course of proceeding and practice in Chambers and the rules of the Court relative thereto, shall, in cases not provided for by the Indian Companies' Act 1866, or these rules, and so far as the same are applicable and not inconsistent with the said Act or these rules, apply to all proceedings for winding-up a Company. General practice to apply.

G. O. rule 74, *mutatis mutandis*; Bengal rule 65.

Affidavits and Attorneys.

Affidavits
and
attorneys.

70. In all cases in which by law a person may make a solemn affirmation instead of an affidavit, the word affidavit in these rules shall be deemed and taken to mean a solemn affirmation; and in proceedings in Courts, other than the High Court, on its original jurisdiction side, the word attorney in these rules shall be deemed and taken to mean a vakeel.

This rule is omitted from G. O. and Bengal rules.

Application of Rules.

Application
of Rules.

71. These rules apply only to proceedings under the Indian Companies' Act, 1866.

G. O. rule 75. This is omitted from Bengal rules.

Commencement of Rules.

72. These Rules shall take effect and come into operation on and after the twentieth day of August 1866.

The English rules take effect from 25th November 1862; the Bengal rules from 5th July 1866.

In the English rules there followed rule 77, providing for interpretation of the rules, which is omitted from Bombay and Bengal rules.

The First Schedule.

Fees and Charges to be allowed to Attorneys.

	Rs.
For attending any summons or other application at the Judge's Chambers, per hour	10
Or where from the length of the attendance or the difficulty of the case the Judge shall think this fee an insufficient remuneration for services performed; such fee as the Judge may allow to the solicitors by a memorandum in writing expressly made for that purpose and signed by the Judge specifying distinctly the ground of such allowance	
For notice and services where the service may be effected as provided by rule 58.....	1
For other duties performed, such of the fees authorised by the rules and regulations of the High Court as to attorney's fees as are applicable.	

Note.—The fees for notices and services are not to apply where the same solicitor is for both parties, unless it is necessary for the purpose of making an affidavit of service.

The Second Schedule.

Forms.

1. Advertisement of petition (Rule 2).
2. Affidavit verifying petition (Rule 4).
3. Order for winding-up by the Court (Act X. of 1866, secs. 103, 104). (Secs. 130, 131 of Act *supra*).
4. Order for winding-up subject to supervision (Act X. of 1866, secs. 163, 164). (Secs. 191, 192 of Act *supra*).
5. Advertisement of order to wind-up (Rule 6).
6. Advertisement of time and place fixed for the appointment of official liquidator (Rule 9).
7. Proposal for appointment of official liquidator and sureties where form No. 6 has been issued.
8. Order appointing an official liquidator (Rules 10, 11).
9. Order appointing a provisional official liquidator (Rules 10, 11, 14, 15).
10. Recognizance of the official liquidator and sureties (Rule 10).
11. Affidavit of sureties (Rule 10.)
12. Sanction of appointment of attorney to official liquidator (Act X. of 1866, sec. 118). (Sec. 146 of Act *supra*).
13. Order for payment of money or delivery of books, &c., to official liquidator (Act X. of 1866, Sec. 121, 122). (secs. 149, 150 of Act *supra*).
14. Direction to open account at the Bank of Bombay (Rules 11, 34, 35, 42).
15. Advertisement of appointment of official liquidator (Rule 13).

16. Advertisement for creditors (Rule 19).
17. Affidavit of official liquidator as to debts and claims (Rule 21).
18. Exhibit referred to in affidavit No. 17.
19. Notice to creditor of allowance of debt (Rule 22).
20. Notice to creditors to come in and prove their debts (Rule 23).
21. Affidavit of creditor in proof of debt (Rule 23).
22. Settlement by the Court of debts and claims (Rule 26).
23. Notice to creditors to attend to receive debt (Rule 26).
24. Affidavit in support of list of contributories (Rule 27).
25. List of contributories referred to in form No. 24.
26. Notice to contributories of appointment to settle list of contributories (Rule 28).
27. Affidavit of service of notice (Rule 28).
28. The schedule referred to in form No. 27.
29. Supplemental list of contributories and affidavit in support (Rule 28).
30. Supplemental list of contributories referred to in form No. 29.
31. Settlement by the Court of the list of contributories (Rule 29).
32. Order on application to vary list (Rule 27).
33. Affidavit of official liquidator in support of proposal for call (Rule 31).
34. Summons for intended call (Rule 31).
35. Advertisement of intended call (Rule 31).
36. General order for a call (Rule 32).
37. Notice to be served with the General Order for a call (Rule 32).
38. Affidavit in support of application for order for payment of call due from contributories (Rule 33).
39. Order for payment of call due from a contributory (Rule 33).
40. Notice to be indorsed on or served with every order directing payment of money into the Bank of Bombay (Rule 37).
41. Certificate of payment of money into the Bank of Bombay (Rule 37).
42. Affidavit of service of order for payment of call (Rule 33).
43. Affidavit of non-payment of money by order directed to be paid into Bank of Bombay (Rule 33).
44. Request to invest cash in Government promissory notes (Rule 41).
45. Notice (or advertisement) of meeting of creditors or contributories (Rule 43).
46. Appointment of proxy to vote at meeting of creditors or contributories (Rule 44).
47. Memorandum of appointment of a person to act as chairman at meeting of creditors or contributories (Rule 45).
48. Chairman's report of result of meeting of creditors or contributories (Rules 43, 44, 45).
49. Memorandum of sanction of Judge to accepting bill of exchange (Rule 46).
50. Memorandum of agreement of compromise with a contributory (Rule 47).
51. Memorandum of sanction of Judge to agreement of compromise (Rule 47).
52. Order or memorandum of the sanction of the Judge for certain acts to be done by the official liquidator (Rule 48).
53. Appearance Book (Rule 57).

54. Summons for persons to attend at Chambers to be examined (Act X. of 1866, sec. 131). (Sec. 162 of Act *supra*).
 55. Declaration of the Company being completely wound-up and of the official liquidator having passed his final account (Rule 60).
 56. Order to dissolve the Company (Rule 61).

No. 1.—*Advertisement of Petition.*

(RULE 2.)

In the matter of the Indian Companies' Act, 1862 and of the Company.

Notice is hereby given, that a petition for the winding-up of the above named Company by the (or subject to the supervision of the) High Court of Judicature at Bombay (or District Court of) was on the day of 186 presented to by the said Company (or A. B. of , a creditor or contributory of the said Company or as the case may be). And that the said petition is directed to be heard before on the day of 186 ; and any creditor or contributory of the said Company desirous to oppose the making of an order for the winding-up of the said Company under the above Act, should appear at the time of hearing; by himself or his counsel for that purpose; and a copy of the petition will be furnished to any creditor or contributory of the said Company requiring the same, by the undersigned, on payment of the regulated charge for the same.

C. and D. of &c.

Solicitors (or Vakeel) for the Petitioners.

No. 2.—*Affidavit verifying Petition.*

(RULE 4.)

In the High Court of Judicature, Bombay, or in the District Court of

In the matter, &c.

I, A. B., of &c., make oath and say (or do solemnly affirm) that such of the statements in the Petition now produced and shewn to me and marked with the letter A, as relate to my own acts and deeds are true, and such of the said statements as relate to the acts and deeds of any other person or persons, I believe to be true.

Sworn, &c.

Or Solemnly affirmed, &c.

No 3.—*Order for Winding-up by the Court, Act X. of 1866, Secs. 103, 104.*
 (Secs. 130, 131 of Act *supra*).

High Court of Judicature, Bombay (or District Court of)
 day the day of 186 .

In the matter, &c.

Upon the petition of the abovenamed Company or, A. B. of &c., a creditor (or contributory of the abovenamed Company) on the day of 186 , preferred unto the said Court, and upon hearing counsel for the petitioner, and for , and upon reading the said petition, an affidavit (or solemn affirmation) of the said

petitioner, filed, &c., verifying the said petition, an affidavit (or solemn affirmation of S. M.) filed the day of 186 , the *Bombay Government Gazette* of the day of , the *Bombay Gazette Newspaper* of the day of (enter any other paper) each containing an advertisement of the said petition (enter any other evidence) this Court doth order that the said Company be wound-up by this Court under the provisions of the Indian Companies' Act, 1866.

No. 4.—Order for Winding-up, subject to Supervision Act X. of 1866, Secs. 163-164. (Secs. 191-192 supra.)

The High Court of Judicature, Bombay, or District Court of
the day of 1866.

In the matter, &c.

Upon the petition, &c., this Court doth order that the voluntary winding of the said Company be continued, but subject to the supervision of the Court; and any of the proceedings under the said voluntary winding-up may be adopted as this Court shall think fit. And the creditors, contributories, and liquidators of the said Company, and all other persons interested, are to be at liberty to apply to a Judge of this Court at Chambers as there may be occasion.

No. 5.—Advertisement of Order to Wind-up.

(RULE 6.)

In the matter, &c.

By an order made by the High Court of Judicature at Bombay (or District Court of in the above matter, dated the day of 186 , on the petition of the above named Company (or A. B. of): It was ordered that, &c., as in order

C. and D. of &c.

Solicitors (or Vakeel) for the said petitioner.

No. 6.—Advertisement of Time and Place fixed for the Appointment of Official Liquidator.

(RULE 9).

In the matter, &c.

Notice is hereby given, that the Hon'ble Mr. Justice (or the Judge of the District of) has fixed the day of 186 , at o'clock in the noon, at his Chambers in the Court House of the High Court at Bombay (or at the District Court House at) as the time and place for the appointment of an official liquidator of the abovenamed Company.

G. H.,

Prothonotary

(or as the case may be).

No. 7.—Proposal for Appointment of Official Liquidator (and Sureties) where Form No. 6 has been issued.

In the matter, &c.

We, the undersigned contributories of the abovenamed Company for the number of shares placed opposite our respective names, hereby

propose Mr. R. P. H. of &c., public accountant, to be the official liquidator of the said Company (and H. N. of &c., and J. P. of &c., to be his sureties).

Name.	Address.	No. of Shares held.

No. 8.—Order appointing an Official Liquidator.

(RULES 10, 11.)

The High Court of Judicature at Bombay or District Court of
186

In the matter, &c.

Upon the application, &c., and upon reading, &c. The Court doth hereby appoint R. P. H. of &c., official liquidator of the abovenamed Company. (If security *has not been given add*, and it is ordered that the said R. P. H. do, on or before the day of next, give security to be approved of by the Court) And it is ordered that the said R. P. H. do, on the day of , and day of 186 and the same days in each succeeding year, leave his accounts at the office of the prothonotary (or office) of the said Court. and it is ordered that all monies to be received by the said R. P. H. be paid by him into the Bank of Bombay (or the Branch nearest to the Court in which the matter is pending), to the credit of the account of the official liquidator of the said Company, within seven days after the receipt thereof. (In case two or more official liquidators are appointed add) And the said Court doth declare that the following Acts, required or authorized by the above Act to be done by the official liquidator may, be done by either (or any one, or two) of the official liquidators hereby appointed,) that is to say (describe the acts), and all other acts so required or authorized to be done by both (or all) the official liquidators hereby appointed.

No. 9.—Order appointing a Provisional Official Liquidator.

(RULES 10, 11, 14, 54.)

The High Court of Judicature at Bombay (or District Court of
) the day of 186 .

In the matter, &c.

Upon the application, &c., and upon reading, &c. The Court doth hereby appoint R. P. H. of &c. provisionally, official liquidator of the abovenamed Company. (If security *dispensed with add*, without

security; or if security is to be given, add direction as to security, account and payment into the bank as in form No. 8.) And the said Court doth hereby limit and restrict the powers of the said R. P. H. as such provisional official liquidator, to the following acts, that is to say, (*describe the acts which the provisional official liquidator is to be authorised to do.*)

No. 10.—*Recognizance of the official liquidator and Sureties.*

(Rule 10.)

In the matter, &c.

The Hon'ble Mr. Justice
Court

(or the Judge of the District
) has approved of and

allowed this recognizance

G. H.

R. P. H. of &c. W. B. of &c., and T. P. of &c., in the High Court of Judicature at Bombay (or District Court of) personally appearing, do acknowledge themselves, and every of them doth acknowledge himself to owe the respective sums of money set opposite to their respective names in the schedule hereto to be paid to the Hon'ble Mr. Justice a Judge of the said High Court (or to Esquire, Judge of the said District Court of) the said or one of them or the executors or administrators of them or one of them; and in default of payment of the said sums, the said R. P. H., W. B., and T. P. are willing and doth agree for himself, his heirs, executors and administrators, by these presents, that the said sums shall be levied, recovered, and received of and from them and every of them, and of and from them and every of them, and of and from all and singular the manors, messuages, lands, tenements and hereditaments, goods and chattels of them and every of them wheresoever the same shall be found. Witness the day of 186 .

Whereas in the matter of, &c. (*take title from order to wind-up*) the High Court of Judicature at Bombay, (or District Court of the) has by an order dated the day of , 186 , appointed the said R. P. H. official liquidator of the said Company, and has thereby directed him to give security to be approved of by the said Court, or (*in case the security precedes the order appointing,*) has approved of the said R. P. H. as a proper person to be appointed official liquidator of the said Company, upon his giving security) And whereas the said Judge has approved of the said W. B. and T. P. to be sureties for the said R. P. H. in the amounts set opposite to their respective names in the schedule hereto and has also approved of the above written recognizance, with the under-written condition as a proper security to be entered into by the said R. P. H., W. B., and T. P., pursuant to the said order and (*or, pursuant to*) the General Order of the said Court in that behalf; and in testimony of such approbation the Hon'ble one of the Judges of the said Court (*or in a District Court*)

Esq. the Judge of the said Court) hath signed an allowance in the margin hereof. Now the condition of the above written recognizance is such that if the said R. P. H. his executors or administrators or any of them do and shall duly account for what the said R. P. H. shall receive, or become liable to pay, as official liquidator of the said Company at such periods and in such manner as the said Court shall appoint, and pay the same as the said Court hath (by the said order) directed, or shall hereafter direct, then the above recognizance to be paid otherwise to remain in full force and virtue.

The schedule above referred to.

R. P. H.	Thousand Rupees.
W. B.	Thousand Rupees.
T. P.	Thousand Rupees.
Taken and acknowledged by the abovenamed R. P. H., &c., &c.	

No. 11.—*Affidavit of Sureties.*

(RULE 10.)

In the High Court of Judicature Bombay (or the District Court of)
In the matter, &c.

We, W. B. of &c. and T. P. of &c., severally make oath and say (or solemnly affirm) as follows:—

1. I, the said W. B. for myself, say that I am worth the sum of Rupees of lawful money of British India, over and above what is sufficient for the payment of all my just debts and liabilities.

2. And I, the said T. P. for myself, say that I am worth the sum of Rupees of, &c. (as above).

Sworn, &c.,

(or solemnly affirmed).

No. 12.—*Sanction of Appointment of Attorney or Vakeel to Official Liquidator and Appointment.*

(ACT X. OF 1866, sec. 118.) (See sec. 146, *supra*).

In the matter, &c.

The Court sanctions the official liquidator appointing an attorney (or vakeel) to assist him in the performance of his duties.

L. H.

I hereby appoint to be my attorney (or vakeel) in this matter, dated this day of 186 .

R. P. H.,

Official Liquidator.

No. 13.—*Order for payment of money or delivery of books, &c., to the Official Liquidator (Act X. of 1866, 121, 123.) (see secs. 149, 151, supra).*

The High Court of Judicature at Bombay or District Court of
day of 186 .

In the matter, &c.

Upon the application of &c., and on reading, &c. It is ordered that A. B. of &c., do, within four days after service hereof, pay to (or deliver, convey, surrender or transfer to or into the hands of) R. P. H. the official liquidator of the said Company, at the office of the said R. P. H. situate at &c., the sum of Rupees being the amount of debt appearing to be due from the said A. B. on his account with the said Company (or any sum or balance, books, papers, estate or effects specifying the property) now being in the hands of the said A. B., and to which the said Company is *primâ facie* entitled (or otherwise as the case may be).

No. 14.—*Direction to open Account at the Bank of Bombay.*

(RULES 11, 34, 35, 42.)

The High Court of Judicature at Bombay (or District Court of)
day of 186

In the matter, &c.

To the Secretary of the Bank of Bombay (or the Agent of the Branch of the Bank of Bombay at).

Sir,

An order, dated the day of 186
having been made in the above matter by the High Court of Judicature
at Bombay (or District Court of) for winding-up the

abovenamed Company by the Court, under the provisions of the said Act, and R. P. H., of _____, having by order dated the _____ day of _____ 186__ been appointed the official liquidator of the said Company, you are requested to open an account, to be entitled "The account of the official liquidator of the _____ Company," in your books pursuant to the said Act, all cheques drawn upon such account must be signed by the official liquidator, whose signature is attached hereto, and countersigned by _____ whose signature is also attached hereto.

I am, Gentlemen,
Your most obedient Servant,
G. H.

Signatures,
R. P. H., Official Liquidator.
G. W.

No. 15.—Advertisement of Appointment of Official Liquidator.
(RULE 13.)

In the matter, &c.
The Honble Mr. Justice _____ (or the District Judge of _____)
) has, by an order dated the _____ day of _____
186__ appointed R. P. H. of _____
to be official liquidator of the abovenamed Company
Dated this _____ day of _____ 186__ .
G. H.

No. 16.—Advertisement for Creditors.
(RULE 19.)

In the matter, &c.
The creditors of the abovenamed Company are required on or before the _____ day of _____ 186__ to send their names and addresses and the particulars of their debts or claims, and the names and addresses of their attorneys (or vakeels) if any, to R. P. H., of _____, the official liquidator of the said Company, and if so required by notice in writing from the official liquidator, are by their attorneys or vakeels to come in and prove their said debts or claims, at such time as shall be specified in such notice, or in default thereof they will be excluded from the benefit of any distribution made before such debts proved, _____ day the _____ day of _____ 186__, at _____ o'clock in the _____ noon, at the said _____ is appointed for hearing and adjudicating upon the debts and claims.
Dated this _____ day of _____ 186__ .
G. H.

No. 17.—Affidavit of Official Liquidator as to Debts and Claims.
(RULE 21.)

In the High Court of Judicature at Bombay, or District Court of _____
In the matter, &c.
I, R. P. H. of &c., the official liquidator of the abovenamed Company, make oath and say (or solemnly affirm) as follows:—
1. I have, in the paper writing now produced and shown to me, and marked with the letter A, set forth a list of all the debts and claims the particulars of which have been sent in to me by persons making claim

upon or claiming to be creditors of the said Company, pursuant to the advertisement issued in that behalf, dated the day of 186 , and the names and addresses of the persons by whom such claims are made.

2. I have investigated the said debts and claims and examined the same with the books and documents of the said Company, in order to ascertain, so far as I am able, which of such debts and claims are justly due from the said Company; and I have in the first part of the said list, set forth such of the said debts and claims or parts thereof, as in my opinion are justly due from the said Company, and proper to be allowed without further evidence, and I have in the sixth column of the said first part of the said list, set forth the amount proper to be allowed in respect of such debts and claims; and I believe that such amounts respectively are justly due and proper to be allowed; and I have, in the seventh column of the said first part of the said list, stated my reasons for such belief.

3. I have, in the second part of the said list, set forth such of the said debts and claims as in my opinion ought to be proved by the respective creditors.

Sworn (or solemnly approved) &c.

No. 18.—*Exhibit referred to in Affidavit No. 17.*

A.

In the matter, &c.

List of debts and claims of which the particulars have been sent into the official liquidator.

This paper writing, marked A, was produced and shown to R. P. II., and is the same as is referred to in his affidavit, sworn (or solemn affirmation made) before me this

day of 186

W. B., &c.

First Part.—Debts and Claims which ought to be allowed without further evidence.

Serial No.	Names of creditors.	Addresses and description.	Particulars of debts or claims.	Amount claimed.	Amount proper to be allowed.	Reasons for belief that amounts are proper to be allowed.
				Rs. a. p.	Rs. a. p.	

Second Part.—Debts and Claims which ought to be proved by the Creditors.

Serial Number.	Names of creditors.	Addresses and description.	Particulars of debts or claims.	Amount claimed.
				Rs. a. p.

No. 19.—Notice to Creditors of Allowance of Debt.

(RULE 22.)

In the matter, &c.

(Place and date.)

Sir,

The debt claimed by you in this matter has been allowed by the Judge at the sum of Rs. (if part only allowed add) if you claim to have a larger sum allowed, you are hereby required to come in and prove the further amount claimed, &c., as in the next form.

I am, &c.,

R. P. H., Official Liquidator.

To Mr. P. R.

No. 20.—Notice to Creditors to come in and prove their Debts.

(RULE 23.)

In the matter, &c.

(Place and date.)

You are hereby required to come in and prove the debt claimed by you against the abovenamed Company, by filing your affidavit, and giving notice thereof to me on or before the _____ day of _____ next, and you are to attend by your attorney (or vakeel) on the _____ day of _____ 186 at _____ o'clock in the _____ noon, being the time appointed for hearing and adjudicating upon the claim.

Dated this

day of

186

R. P. H., Official Liquidator.

To Mr. P. R.

No. 21.—Affidavit of Creditor in Proof of Debt.

(RULE 23.)

In the High Court of Judicature, Bombay (or the District Court of)

In the matter, &c.

I, S. T. of &c., make oath (or solemnly affirm) and say as follows:—

1. The abovenamed Company was on the _____ day of _____ 186____, the date of the order for winding-up the same, and still is, justly

and truly indebted to me in the sum of Rupees _____ for &c. (*Describe shortly the nature of the debt and exhibit any security for it; and in case of a trade debt exhibit a bill of parcels, and verify the reasonableness of the charges, as in proving a debt in a suit.*)

2. I have not, nor hath nor have any person or persons by my order or to my knowledge or belief for my use, received the sum of Rupees _____ or any part thereof, or any security or satisfaction for the same or any part thereof. (*If any security, add, except the said (describe the security) hereinbefore mentioned or referred to. Sworn (or solemnly affirmed, &c.)*)

No. 22.—Settlement by the Court of Debts and Claims.

(RULE 26.) (See note to rule 26 *supra*).

In the High Court of Judicature, Bombay, or in the District Court of _____.

The debts and claims which have been allowed are set forth in the first schedule hereto, and with the interest thereon and costs mentioned in the schedule are due to the persons therein named, and amount altogether to Rs. _____.

In the first part of the said schedule are set forth such of the said debts and claims as carry interest, and the interest thereon has been computed, after the rate they respectively carry down to the present date.

In the second part of the said schedule are set forth such of the debts and claims as do not carry interest, and the interest thereon has been computed at the rate of 6 per cent. per annum from the day of _____ 18____, being the date of the order to wind-up the Company, down to the present date.

The claims set forth in the second schedule hereto have been brought in by the persons therein named and have been disallowed.

The First Schedule above referred to.

First Part.—Debts and Claims which carry Interest.

No.	Names of creditors.	Addresses and description.	Particulars of debt.	Total Amount.
1	J. L.	Of (address.) Principal Interest at p. cent per annum from 186 to the date of this certi- ficate Costs of proof.	On bills of ex- change dated, &c. Rs. Rs.	Rs. a. p.

If you cannot attend personally, the cheque will be delivered to your order, upon your filling up and signing the subjoined form.

The bills or securities (if any) held by you must be produced at the time of such application.

Dated this day of 186 .

R. P. H., Official Liquidator.

Sir,

Please to deliver to W. R. the cheque for Rs. referred to in the above letter as payable to me.

S. T., Creditor.

To

Mr. R. P. H.,

Official Liquidator of the Company.

No. 24.—Affidavit in Support of List of Contributories.

(RULE 27.)

In the High Court of Judicature, Bombay, (or in the District Court of)

In the matter of, &c.

I, R. P. H., of &c., the official liquidator of the abovenamed Company make oath and say (or solemnly affirm) as follows:—

1. The paper writing now produced and shown to me, and marked with the letter A contains a list of the contributories of the said Company, made out by me from the books and papers of the said Company, together with their respective addresses, and the number of shares (or extent of interest) to be attributed to each; and such is, to the best of my knowledge, information and belief, a true and accurate list of the contributories of the said Company, so far as I have been able to make out and ascertain the same.

2. I have, in the first part of the said list, marked A, distinguished the persons who are contributories in their own right.

3. I have, in the second part of the said list, marked A, distinguished the persons who are contributories as being representatives of, or being liable for the debts of, others.

Sworn (or solemnly affirmed) &c.

No. 25.—List of Contributories referred to in Form No. 24.

A.

In the matter, &c.

This list of contributories, marked A, was produced and shown to R. P. H. and is the same list of contributories as is referred to in his affidavit. Sworn (or solemn affirmation made) before me this day of 186 .

W. B., &c.

First Part.—Contributories in their own right.

Serial No.	Name.	Address.	Description.	In what character included.	Number of shares (or extent of interest).

Second Part.—Contributories as being Representatives of, or liable for the debts of, others.

Serial No.	Name.	Address.	Description.	In what character included.	Number of shares (or extent of interest).

No. 26.—Notice to Contributories of Appointment to settle List of Contributories.

(RULE 28.)

In the matter, &c.

The Honorable Mr. Justice (or as the case may be)
 has appointed the day of 186 , at
 of the clock in the noon at , to settle the list
 of the contributories of the abovenamed Company, made out and left
 at the Chambers of the said Judge by the official liquidator of the said
 Company, and you are included in such list in the character, and for the
 number of shares (or extent of interest), stated below, and if no sufficient

cause is shown by you to the contrary at the time and place aforesaid,
the list will be settled by the said Judge, including you therein. Dated
this day of 186 .

R. P. H., Official Liquidator.

To—Mr. A. B. and to Mr. C. D. his attorney (or vakeel).

No. on list.	Name.	Address.	Description.	In what character included.	No. of shares (or extent of interest).

No. 27.—Affidavit of Service of Notice.

(RULE 28.)

In the High Court of Judicature at Bombay (or in the District Court of
).

In the matter, &c.

I, W. S. of &c., clerk to Messrs. C. and D. of &c., the attorneys of the official liquidator of the abovenamed Company, make oath (or solemnly affirm) and say as follows:—

1. The first six columns of the schedule now produced and shown to me, and marked with the letter A contain a true copy of the list of contributories of the said Company, made out and left at the

by the said official liquidator, on the _____ day of 186 , and now on the file of proceedings of the said Company, as I know from having, on the _____ day of 186 , examined and compared the said schedule with the said list ; and I have in the seventh column of the said schedule marked A set forth the names and addresses of the attorneys who have entered appearances for any of the contributories named in the said list.

2. I did, on the _____ day of _____ 186____, in the manner hereinafter mentioned serve a true copy of the notice now produced and shown to me, and marked B, upon each of the said respective persons whose names, addresses, and descriptions appear in the second, third and fourth columns of the said schedule marked A, except that in the tabular form at the foot of such copies respectively I inserted the number on list, name, address, description, in what character included, and number of shares (or extent of interest) of the person on whom such copy of the said notice was served, in the same words and figures as the same particulars are set forth in the said schedule marked A.

3. I served the said respective copies of the said notice, by putting such copies respectively, duly addressed to such persons respectively or their attorneys, according to their respective names and addresses appearing in the said schedule and marked A and with the proper postage

stamps affixed thereto as prepaid letters, into the Post Office Receiving House No. _____, in _____ Street, Bombay (or as the case may be) between the hours of _____ and _____ of the o'clock in the _____ of the said _____ day of _____. Sworn (or solemnly affirmed) &c.

No. 28.—The Schedule referred to in Form No. 27.

A.

In the matter, &c.

This schedule, marked A, was produced and shown to W. S. and is the same schedule as is referred to in his affidavit. Sworn (or solemnly affirmed) before me this day of 186 .

W. B., &c.

No. on list.	Name.	Address.	Description.	In what character in- cluded.	Number of shares (or extent of inter- est).	Names and addresses of attorneys (or vakeels) who have entered appear- ances, and been served with a copy of the notice referred to in the affidavit of W. S. to which this sche- dule is an exhibit.
1	2	3	4	5	6	7

No. 29.—*Supplemental List of Contributories, and Affidavit in Support.*
(RULE 28.)

In the High Court of Judicature at Bombay (or in the District Court of

In the matter, &c.

I, R. P. H. of &c., the official liquidator of the abovenamed Company, make oath (or solemnly affirm) and say as follows:—

1. Since leaving at the office of the list of the con-
tributories in the matter, on the day of 186

it has come to my knowledge that the several persons whose names are set forth in the supplemental list of contributories now produced and shown to me, and marked with the letter B, are or have been holders of shares (or members of) the said Company, and to the best of my judgment, information, and belief such persons are contributories of the said Company.

2. The said supplemental list marked B contains the names of such persons, together with their respective addresses, and the number of shares (or extent of interest) to be attributed to each; and such list is, to the best of my knowledge, information, and belief, true and accurate.

3. I have, in the first part of the said list, marked B, distinguished such of the said persons as are contributories in their own right.

4. I have, in the second part of the said list, marked B, distinguished such of the said persons as are contributories as being representatives of or being liable for the debts of, others. Sworn (or solemnly affirmed) &c.

No. 30.—Supplemental List of Contributories referred to in Form No. 29.

B.

In the matter, &c.

This supplemental list of contributories marked B, was produced and shown to R. P. H. and is the same supplemental list of contributories as is referred to in his affidavit. Sworn (or solemn affirmation made) before me, this day of 186 .

W. B., &c.

Note.—The supplemental list is to be made out in the same form as the original list, form No. 25.

No. 31.—Settlement by the Court of the List of Contributories.

(RULE 28.)

In the High Court of Judicature at Bombay (or in the District Court of).

In the matter, &c.

The result of the settlement of the list of the contributories of the abovenamed Company, made out and left at the Office of the by the official liquidator of the said Company, on the day of 186 , pursuant to the above Act and the General Order of this Court in that behalf, so far as the said list has been settled up to the date of this certificate is as follows:—

1. The several persons, whose names are set forth in the second column of the first schedule hereto have been included in the said List of Contributories as contributories of the said Company in respect of the number of shares (or extent of interest) set opposite the names of such contributories respectively in the said schedule.

I have, in the first part of the said schedule, distinguished such of the said several persons included in the said list as are contributories in their own right. I have, in the second part of the said schedule, distinguished such of the said several persons included in the said list as are contributories as being representative of, or being liable to the debts of, others.

2. The several persons whose names are set forth in the second column of the said schedule hereto have been excluded from the said list of contributories.

3. I have, in the seventh column of the said first and second schedules, set forth opposite the names of each of the said several persons respectively the date when such person was included in or excluded from the said list of contributories.

The First Schedule above referred to.

First Part—Contributories in their own right.

Serial No. in list.	Name.	Address.	Description.	In what character included.	Number of shares (or extent of interest).	Date when included in the list.

Second Part.—Contributories as being representatives of, or liable to the debts of, others.

Serial No. in list.	Name.	Address.	Description.	In what character included.	Number of shares (or extent of interest).	Date when included in the list.

The Second Schedule above referred to.

Serial No. in list.	Name.	Address.	Description.	In what character proposed to be included.	Number of shares (or extent of in- terest).	Date when excluded from the list.

Dated this day of 186 .
(*Signature of the Judge or District Judge.*)

No. 32.—Order on Application to vary List.
(RULE 27.)

High Court of Judicature at Bombay or District Court of
day the day of 186 .
In the matter, &c.

Upon the application of W. N. to review the list of contributories of the said Company, in respect of the inclusion of the said W. N. therein; and that his name may be excluded therefrom, and upon hearing counsel, &c., and upon reading, &c. It is ordered that the name of the said W. N. be excluded from the said list of contributories (or the Court doth not think fit to make any order on the said application, except that the said W. N. do pay to R. P. H. the official liquidator of the said Company, his costs of this application, to be taxed by the taxing Master in case the parties differ (*or in a District Court*) Rs. for his costs of this application.

No. 33.—Affidavit of Official Liquidator in Support of Proposal for Call.
(RULE 31.)

In the matter, &c.

I, R. P. H., of &c., the official liquidator of the abovenamed Company, make oath (or solemnly affirm) and say as follows:—

1. I have in the schedule now produced and shown to me, and marked with the letter A, set forth a statement showing the amount due in respect of the debts allowed against the said Company, and the estimated amount of the costs, charges and expenses of and incidental to the winding-up the affairs thereof, and which several amounts form in the aggregate the sum of Rs. or thereabouts.

2. I have also in the said Schedule set forth a statement of the assets in hand belonging to the said Company, amounting to the sum of Rs. and no more. There are no other assets belonging to the said Company, except the amounts due from certain of the said contributories of the said Company, and to the best of my information and belief it will be impossible to realize in respect of the said amounts more than the sum of Rs. or thereabouts.

3. It appears by the certificate of the Honorable Mr. Justice (or as the case may be) dated the day of 186 , that persons have been settled on the list of contributories of the said Company, in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the said Company, and of paying the costs, charges, and expenses of and incidental to the winding-up the affairs thereof, I believe the sum of Rs. will be required, in addition to the amount of the assets of the said Company mentioned in Schedule A and the said sum of Rs.

5. In order to provide the said sum of Rs. it is necessary to make a call upon the several persons who have been settled on the list of contributories as before mentioned, and having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that for the purpose of realizing the amount required, as before mentioned, it is necessary that a call of Rs. per share should be made.

Sworn (or solemnly affirmed) &c.

No. 34.—Summons for Intended Call.

(RULE 31.)

In the matter, &c.

Let all parties concerned attend at on day the day of 186 , at of the clock in the noon, on the hearing of an application on the part of the official liquidator of the abovenamed Company, that a call to the amount of Rs. per share may be made on all the contributories (or if upon any particular class specify the same) of the said Company.

This summons was taken out by A. B. of Attorneys for the said official liquidator.

To Mr. A. B. of &c. a contributory of the said Company proposed to be included in the said call.

No. 35.—Advertisement of Intended Call.

(RULE 31.)

In the matter, &c.

By direction of the Notice is hereby given that the said Judge has appointed the day of 186 , at o'clock in the noon, at to make a call on all the contributories of the said Company, (or as the case may be) and that the said call shall be for Rs. per share. All persons interested are entitled to attend at such day, hour, and place to offer objections to such call.

Dated this day of 186 .

No. 36.—General Order for a Call.

(RULE 32.)

High Court of Judicature, Bombay, (or District Court of the day of 186 .

In the matter, &c.

Upon the application of the official liquidator of the abovenamed Company, and upon reading two orders, dated the day of

186 , and the day of 186 , and the day of 186 , the certificate of the dated the day of 186 , an affidavit of the said official liquidator filed 186 , and the exhibit marked A therein referred to, and an affidavit of filed 186 , It is ordered that a call of Rs. per share be made on all the contributories of the said Company (or as the case may be). And it is ordered that each such contributory do, on or before the day of 186 , pay into the Bank of Bombay (or the Branch of the Bank of Bombay), to the account of the official liquidator of the Company, the amount which will be due from him or her in respect of such call.

No. 37.—Notice to be served with the General Order for a Call.

(RULE 32.)

In the matter, &c.

The amount due from you, A. B., in respect of the call made by the above (or within) order, is the sum of Rs. , which sum is to be paid by you into the Bank of Bombay (or the branch of the Bank of Bombay), to the account mentioned in the said order. You can pay the same in person, or through a banker or other agent, but this notice and copy of order must be produced at the Bank upon such payment, and the cashier of the Bank will, upon receiving the same deliver to you a certificate of the payment in, numbered signed by the said cashier. In order to prevent proceedings being taken against you for non-payment, you must immediately upon such payment in, cause written notice of the payment, and of the date thereof, to be given to me, as the official liquidator of the said Company, at my office, No. street inside the Fort, Bombay. Dated this day of 186

R. P. H., official liquidator.

To Mr. A. B.

No. 38.—Affidavit in support of Application for Order for Payment of Call due from Contributory.

(RULE 33.)

In the High Court of Judicature, Bombay (or the District Court of)

In the matter, &c.

I, R. P. H., of &c. the official liquidator of the abovenamed Company make oath (or solemnly affirm) and say as follows:—

1. None of the contributories of the said Company, whose names are set forth in the Schedule hereunto annexed marked A, have paid, or caused to be paid, the respective sums set opposite their respective names in the said Schedule, and which sums are the respective amounts now due from them respectively in respect of the calls of Rs. per share, in pursuance of the order of the Judge in that behalf. Dated the day of 186

2. The respective amounts or sums set opposite the names of such contributories respectively in such Schedule are the true amounts due and owing by such contributories respectively in respect of the said call. Sworn (or solemnly affirmed) &c.

A.

The Schedule above referred to.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.

NOTE.—In addition to the above affidavit, an affidavit of the service of the order and notice (Nos. 36 and 37) will be required.

No. 39.—Order for Payment of Call due from a Contributory.

(RULE 33.)

The High Court of Judicature, Bombay (or in the District Court of
) the day of 186 .

In the matter, &c.

Upon the application of the official liquidator of the abovenamed Company, and upon reading the order, dated the day of 186 , an affidavit of filed the day of 186 , and an affidavit of the said official liquidator, filed the day of 186 , it is ordered, that C. D. of &c. (or E. F. of &c., the legal personal representative of L. M., late of &c. deceased), one of the contributories of the said Company, (or if against several contributories the several persons named in the second column of the schedule to this order being respectively contributories of the said Company) do, on or before the day of or within four days after service of this order, pay into the Bank of Bombay (or the branch of the Bank of Bombay), to the account of the official liquidator of the Company (or to A. B. the official liquidator of the said Company, at his office, No. street, in the) the sum of Rs. (If against a legal personal representative, add out of the assets of the said L. M., deceased, in his hands as such legal personal representative as aforesaid, to be administered in a due course of administration, if the said E. F. has in his hands so much to be administered; or if against several contributories the several sums of money set opposite to their respective names in the sixth column of the schedule hereto) such sum (or sums) being the amount (or amounts) due from the said C. D. (or L. M.) or the said several persons respectively in respect of the call of Rs. per share, made by the said order dated the day of 186 .

No. 43.—*Affidavit of Non-payment of Money by Order directed to be paid into the Bank of Bombay.*

(RULE 38.)

In the High Court of Judicature at Bombay (or the District Court of)

In the matter, &c.

I, R. P. II., of &c., the official liquidator of the abovenamed Company, make oath and say as follows :—

1. G. S., the person named in an order made in the matter by the Honorable Mr. Justice (or as the case may be), dated the day of 186 , has not paid into the Bank of Bombay, to the account of the official liquidator of the Company, the whole or any part of the sum of Rs. as by the said order directed.

Or, (in case of several parties) :—

1. None of the several persons whose names and addresses are set forth in the schedule hereunder written, and who have respectively been duly served with orders made in this matter by the Honorable Mr. Justice (or as the case may be) of the respective dates set opposite to their respective names in the said schedule, have paid into the Bank of Bombay, to the account of the official liquidator of the Company, the whole or any part of the several sums of money set opposite to their respective names in the Schedule hereunder written, as by the said order respectively directed.

2. I am enabled to depose to such non-payment, by reason of my having this day ascertained, by inquiry at the said Bank, that such payment (or payments) has (or have) not been made, and seen the certificate of payment in, numbered (or several certificates of payment in, the numbers whereof respectively are set forth in the sixth column of the said schedule, opposite the names of the said respective persons, being certificates) furnished by me to the cashier of the said Bank for delivery to the said G. F. (or several persons respectively) upon such payment (or payments) being made, still in the hands of the cashier of the said Bank. No notice (or notices) of such payment (or payments) having been made has (or have) been given to me by the said G. F. (or several persons respectively). Sworn (or solemnly affirmed), &c.

The Schedule above referred to.

Name.	Address.	Description.	Amount.	Date of balance order.	Number of certificate.

No. 44.—Request to invest Cash in Government Promissory Notes.

(RULE 41.)

In the matter, &c.

To The Secretary of the Bank of Bombay.

Sir,

It appearing that the sum of Rs. _____ cash is standing to the credit of the account of the official liquidator of the abovenamed Company, you are hereby requested to invest the sum of Rs. _____, part thereof, in the purchase of _____ per cent. Government Notes in the name of R. P. H., of &c., the official liquidator of the said Company, and to deposit such Government Notes in the Bank of Bombay (or the Branch thereof) in the name and on behalf of the official liquidator. The said notes are not to be sold, transferred, or otherwise dealt with, except upon a direction for that purpose signed by the official liquidator of the said Company, and countersigned by a Judge of the High Court of Judicature of Bombay (or by the Judge of the District Court of _____, or under an order to be made by the said Judge).

Dated this _____ day of _____ 186 _____.

I am, Gentlemen,

Your most obedient Servant,

R. P. H., Official Liquidator.

G. H.

(Countersigned.)

No. 45.—Notice (or Advertisement) of Meeting of Creditors or Contributories.

(RULE 43.)

In the matter, &c.

Notice is hereby given that the High Court of Judicature at Bombay (or the District Court of _____) has directed a meeting of the creditors (or contributories) of the abovenamed Company to be summoned, pursuant to the above Act, for the purpose of ascertaining their wishes as to (*state the object for which meeting called, unless notice is by advertisement, in which case say*, certain matters relating to the winding-up of the said Company), and that such meeting will be held on _____ day the _____ day of _____ 186 _____, at _____ o'clock in the _____ noon, at _____ in the _____, at which time and place all the creditors (or contributories) of the said Company are requested to attend. (The said Judge has appointed H. T. of &c., to act as chairman of such meeting). Dated this _____ day of _____ 186 _____

R. P. H., Official Liquidator.

No. 46.—Appointment of Proxy to vote at Meeting of Creditors or Contributories.

(RULE 44.)

In the matter, &c.

I, W. S. of _____, in the _____ being a creditor (or contributory) of the abovenamed Company, hereby appoint _____ of _____, as my proxy to vote for me, and on my behalf, at the meeting of the creditors (or contributories) of the said Company, summoned by the director of the _____, to be held on the _____ day of _____, and at any adjournment thereof. As witness my hand this _____ day of _____ 186 _____, signed by the said W. S. in the _____ W. S. presence of _____

J. M. of &c.

No. 47.—Memorandum of Appointment of a Person to act as Chairman at Meeting of Creditors or Contributories.

(RULE 45.)

In the matter, &c.

Mr. H. T. of &c., one of the creditors (or contributories) of the above-named Company is appointed to act as chairman of a meeting of the creditors (or contributories) of the said Company, summoned by direction of the said Judge, pursuant to the above Act, to be held on the day of 186 , at o'clock in the noon, at , and to report the result of such meeting to the said Judge.

The said meeting is summoned for the purpose of ascertaining the wishes of the creditors (or contributories) of the said Company as to (state the object for which meeting called), and at such meeting the votes of the creditors (or contributories) may be given either personally or by proxy. Dated this day of 186 .

No. 48.—Chairman's Report of Result of Meeting of Creditors or Contributories.

(RULES 43, 44 & 45.)

In the matter, &c.

I, H. T., the person appointed by the High Court of Judicature at Bombay (or District Court of) to act as chairman of a meeting of the creditors (or contributories) of the abovenamed Company, summoned by advertisement (or notice) dated the day of 186 , and held on the day of 186 , at , do hereby report to the said Court the result of such meeting as follows :—

The said meeting was attended, either personally or by proxy, by creditors, to whom debts against the said Company have been allowed, amounting in the whole to the value of Rs. (or by contributories holding in the whole shares in the said Company, and entitled respectively, by the regulations of the Company, to the number of votes hereinafter mentioned).

The question submitted to the said meeting was whether the creditors (or contributories) of the said Company approved of the proposal of the official liquidator of the said Company, that, &c. (as the case may be), and wished that such proposal should be adopted and carried into effect.

The said meeting was unanimously of opinion that the said proposal should (or should not) be adopted and carried into effect, or the result of the voting upon such question was as follows :—

The undermentioned creditors (or contributories) voted in favour of the said proposal being adopted and carried into effect :—

Name of creditors (or contributory).	Address.	Value of debt (or number of shares.)	Number of votes conferred on each contributory by the regulations of the Company.

The undermentioned creditors (or contributories) voted against the said proposal being adopted and carried into effect.

Name of creditor (or contributory.)	Address.	Value of debt (or number of shares.)	Number of votes conferred on each contributory by the regulations of the Company.

Dated this

day of

186 .

(Signed) H. T.,
Chairman.

No. 49.—Memorandum of Sanction of Court to Accepting Bill of Exchange.

(RULE 46).

In the matter, &c.

The Court has sanctioned the acceptance of this Bill of Exchange by the official liquidator, on behalf of the said Company.

No. 50.—Memorandum of Agreement of Compromise with a Contributory.

(RULE 47).

In the matter, &c.

Memorandum of Agreement, entered into this day of
186 , between K. P. H., of &c., the official liquidator of the abovenamed Company, of the one part, and S. B. of &c., one of the contributories of the said Company, of the other part.

Whereas the said S. B. has been settled on the list of contributories of the said Company as a contributory in respect of shares in the said Company; and whereas, by an order made by , dated the day of 186 , a call of Rs. per share was made on all the contributories of the said Company, and there is now due from the said S. B. to the said Company the sum of Rs. in respect of the said call; and whereas the said S. B. has proposed to pay to the said official liquidator the sum of Rs. by way of compromise, and in satisfaction and discharge of the said sum of Rs. , and of all liability whatsoever, as a contributory of the said Company; and whereas the said official liquidator, having investigated the affairs of the said S. B., and believing that such compromise will be beneficial to the said Company, hath, in

exercise of the power for that purpose given to him by the above Act, agreed to accept the same, subject to the sanction of the Court, and to the conditions and agreements hereinafter contained :—

Now it is hereby agreed by and between the said parties hereto :

1. That the said official liquidator shall, before the _____ day of _____ next, apply to a Judge of the said Court at Chambers to sanction this agreement of compromise.

2. That upon this agreement being sanctioned by the said Judge the said S. B. shall within _____ day next after such sanction, pay to the said official liquidator the said sum of Rs. _____, and when thereto required, shall do and execute all such acts and deeds as may be necessary for transferring or surrendering and releasing to the said official liquidator on behalf of the said Company, or in such manner as the said Judge may direct, the said shares held by the said S. B. in the said Company, and all claim and demand whatsoever which the said S. B. has or may have against the said Company in respect of the said shares, or the distribution of the assets of the said Company, otherwise howsoever.

3. That the said sum of Rs. _____, and the transfer or surrender and release of the said shares and interest of the said S. B. as aforesaid shall be accepted by the said official liquidator as, and be deemed and taken to give to the said S. B. a full and complete discharge from all calls and liabilities, claims and demands whatsoever, which the Company or the official liquidator thereof now has or may hereafter have, or be entitled to against the said S. B. in respect of his being or having been the holder of the said shares, or otherwise, as a contributory of the said Company.

4. That in case this agreement shall not be sanctioned by the said Judge it shall cease and determine, and the said official liquidator and the said S. B. shall be remitted to their original rights with respect to each other, as if this agreement had not been entered into.

5. That in case this agreement shall be sanctioned by the said Judge, and the said S. B. shall not in all respects perform the same on his part, the official liquidator shall be at liberty with the sanction of the said Judge, and without notice to the said S. B. to enforce the performance thereof, or with the like sanction, to give notice to the said S. B. that he abandons this agreement, whereupon the same shall cease and determine, and the said official liquidator shall be entitled to proceed against the said S. B. to enforce payment of the said sum of Rs. _____

or so much thereof as shall then remain due and owing unpaid, as if this agreement had not been entered into.

Witness to the signatures of the said } R. P. H., Official Liquidator.
R. P. H. and S. B. } S. B.

C. D. of &c.

No. 51.—Memorandum of Sanction of Court to Agreement of Compromise.

(RULE 47.)

The Court has sanctioned this agreement of compromise.

No. 52.—Order or Memorandum of the Sanction of the Court for certain Acts to be done by Official Liquidator.

(RULE 48.)

The High Court of Judicature at Bombay }
or the District Court of _____ } day of _____ 186 _____

In the matter, &c.

The Court _____ doth hereby sanction (or has sanctioned) the following proceedings being taken (or acts being done) by the official

No. 55.—Declaration of the Company being completely wound-up, and of the Official Liquidator having passed his Final Account.

(RULE 60.)

In the matter, &c.

I hereby declare that R. P. H., the official liquidator of the above-named Company, has passed his final account as such official liquidator, and that the balance of Rs. thereby found to be due to (or from) the said official liquidator has been paid in the manner directed by the order dated the day of 186 , and that the affairs of the said Company have been completely wound-up.

Dated this day of 186 .

No. 56.—Order to dissolve the Company.

(RULE 61.)

High Court of Judicature at Bombay or the District Court of
the day of 186 .

In the matter, &c.

Upon the application of the official liquidator of the abovenamed Company, and upon reading an order dated the day of , and the declaration of the Court dated the day of , whereby it appears that the affairs of the said Company have been completely wound-up, and that the balance of Rs. due from (or to) the official liquidator has been paid in manner directed by the said order. It is ordered that the said

Company be dissolved as from this day of 186 , and that the recognizance, dated the day of 186 , entered into by the said official liquidator, together with W. B. and S. P., his sureties, be vacated.

A. B.,

Prothonotary,

or A. B.,

District Judge.

R. Couch.

J. Arnould.

H. Newton.

M. W. Westropp.

H. P. St. G. Tucker.

A. B. Warden.

J. Gibbs.

C. Sargent.

N. B.—The above forms correspond with those appended to English rules and also to the Bengal rules, which latter, however, have omitted Forms Nos. 14, 23, 30, 40, 41, 44, 52, *supra*.

The Bengal rules also commence with "General Headings."

General headings for all proceedings in Court.

1. In the High Court of
this day of

In the matter of the Indian Companies' Act, 1866, and
of the Company.

2. For all advertisements, notices and other proceedings not taken
in or under the order of the Court.

In the matter of the Indian Companies' Act, 1866, and
of the Company.

APPENDIX.

INDIAN REGISTRATION ACT III. OF 1877.

Of Registrable Documents.

17. The documents next hereinafter mentioned shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which Act No. XVI. of 1864, or Act No. XX. of 1866, or Act No. VIII. of 1871 or this Act, came or comes into force (that is to say),—

Documents of which registration is compulsory.

(a) Instruments of gift of immoveable property :

(b) Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property :

(c) Non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest ; and

(d) Leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent :

Provided that the Local Government may, by order published in the Official Gazette, exempt from the operation of the former part of this section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years, and the annual rents reserved by which do not exceed fifty rupees.

Nothing in clauses (b) and (c) of this Section applies to

Exception of composition deeds ; and of transfers of shares and debentures in Land Companies ;

(e) any composition-deed ;

(f) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immoveable property, or

(g) any endorsement upon or transfer of any debenture issued by any such Company ;

(h) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immoveable property, but merely creating a right to obtain another document which will when executed create, declare, assign, limit or extinguish any such right, title or interest ;

documents merely creating right to obtain other documents.

(i) decrees and orders of Courts and awards ;

(j) grants of immoveable property by Government ;

(k) instruments of partition made by revenue-officers ;

(l) certificates and instruments of collateral security granted under the Land Improvement Act, 1871.

Authorities to adopt a son, executed after the first day of January 1872 and not conferred by a will, shall also be registered.

Authorities to adopt.

SPECIFIC RELIEF ACT I. OF 1877.

23. Except as otherwise provided by this chapter, the specific performance of a contract may be obtained by—

Who may obtain specific performance.

(g) when a public Company has entered into a contract and subsequently becomes amalgamated with another public Company, the new Company which arises out of the amalgamation ;

(h) when the promoters of a public Company have, before its incorporation, entered into a contract for the purposes of the Company, and such contract is warranted by the terms of the incorporation, the Company.

27. Except as otherwise provided by this chapter, specific performance of a contract may be enforced against —

Relief against parties and persons claiming under them by subsequent title.

(a) either party thereto ;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract ;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d) when a public Company has entered into a contract and subsequently becomes amalgamated with another public Company, the new Company which arises out of the amalgamation;

(e) when the promoters of a public Company have, before its incorporation, entered into a contract, the Company: provided that the Company has ratified and adopted the contract and the contract is warranted by the terms of the incorporation.

CHAPTER VIII.—ENFORCEMENT OF PUBLIC DUTIES.

Power to order public servants and others to do certain specific acts.

45. Any of the High Courts of Judicature at Fort William, Madras, and Bombay, may make an order requiring any specific act to be done or forborne, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or inferior Court of Judicature: provided—

(a) that an application for such order be made by some person whose property, franchise or personal right would be injured by the forbearing or doing (as the case may be) of the said specific act;

(b) that such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character;

(c) that in the opinion of the High Court such doing or forbearing is consonant to right and justice;

(d) that the applicant has no other specific and adequate legal remedy; and

(e) that the remedy given by the order applied for will be complete. Nothing in this section shall be deemed to authorize any High Court—

Exemptions from such power.

(f) to make any order binding on the Secretary of State for India in Council, on the Governor-General in Council, on the Governor of Madras in Council, on the Governor of Bombay in Council, or on the Lieutenant-Governor of Bengal,

(g) to make any order on any other servant of the Crown, as such, merely to enforce the satisfaction of a claim upon the Crown; or

(h) to make any order which is otherwise expressly excluded by any law for the time being in force.

Application how made.

46. Every application under section 45 must be founded on an affidavit of the person injured, stating his right in the matter in question, his demand of justice and the denial thereof; and the High Court may, in its discretion, make the order applied for absolute in the first instance, or refuse it, or grant a rule to show cause why the order applied for should not be made.

Procedure thereon.

Order in alternative.

If, in the last case, the person, Court, or corporation complained of shows no sufficient cause, the High Court may first make an order in the alternative, either to do or forbear the Act mentioned in the order, or to signify some reason to the contrary, and make an answer thereto by such day as the High Court fixes in this behalf.

Peremptory order.

47. If the person, Court, or corporation to whom or to which such order is directed makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do or forbear the act absolutely.

Execution of, and appeal from, orders.

48. Every order under this chapter shall be executed, and may be appealed from, as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court.

Costs.

49. The costs of all applications and orders under this chapter shall be in the discretion of the High Court.

Bar to issue of *mandamus*.

50. Neither the High Court nor any Judge thereof shall hereafter issue any writ of *mandamus*.

Power to frame rules.

51. Each of the said High Courts shall, as soon as conveniently may be, frame rules to regulate the procedure under this chapter; and

until such rules are framed, the practice of such Court as to applications for and grants of writs of *mandamus* shall apply, so far as may be practicable, to applications and orders under this chapter.

The following notification was published in the *Gazette of India*, Part II., p. 443, dated 11th August 1877 :—

NOTIFICATION.

Calcutta, the 9th August 1877.

The following rules passed by the High Court of Judicature at Fort William in Bengal are published for general information.

R. BELCHAMBERS,

Registrar.

The following rules, made pursuant to section 51 of "The Specific Relief Act, 1877," are to come into effect as the rules of the High Court of Judicature at Fort William in Bengal from the first day of September 1877 :— Bengal rules.

1.—Every application under section 45 of "The Specific Relief Act, 1877," shall be made to the Judge or one of the Judges exercising the Original Civil Jurisdiction of this Court.

2.—If a rule or alternative order be granted or made under section 46 of the said Act, the matter shall, unless otherwise ordered, be set down for hearing at the head of the peremptory list of contested suits for the day fixed by such rule or order for showing cause or making an answer, or such other day or days to which it may be adjourned.

3.—If cause be shown or answer made upon affidavit putting in issue any material question of fact, the Court may adjourn the matter to some early day for hearing upon the testimony of witnesses to be examined in like manner as in a suit.

4.—When a matter is adjourned for hearing upon the testimony of witnesses, either party may obtain summonses to witnesses, and the procedure in all other respects shall be similar to that followed in a suit.

5.—Every application, affidavit, rule, order or other proceeding under the 8th Chapter of the said Act shall be intitled in this Court in the Matter of the Act and of the Applicant.

6.—Unless otherwise ordered, every rule under section 46 of the said Act shall call not only on the public servant, corporation, or inferior Court, but also on any person, other than the applicant, who may be affected by the act to be done or forborne, to show cause.

7.—The service of every rule or order under the 8th Chapter of the said Act shall be made in like manner as the service of the orders made by the Court in the exercise of its Ordinary Original Civil Jurisdiction.

The following notification was published in the *Bombay Government Gazette*, Part I., p. 902, dated 11th October 1877 :—

The following Rules under section 51 of the Specific Relief Act, 1877, Bombay rules. shall come into force on the 1st October 1877 :—

1. Every application under Chapter VIII. of the Specific Relief Act shall be intitled in the Matter of the Act and of the Applicant, and be made on motion in open Court before one of the Judges on the Original Civil Side of the Court, and shall be supported and answered by Affidavits, unless in lieu thereof, or in addition thereto, the Court shall direct oral testimony to be taken.

2. Any Rule granted on such application as aforesaid shall, unless the Judge otherwise order, be returnable four days after service thereof, and all Affidavits in reply shall be filed in the Prothonotary's Office, and copies thereof served upon the applicant or his Attorney at or before 4 o'clock on the day preceding the showing of cause against such application.

High Court, Bombay,

The 29th day of September 1877.

CHAPTER X.—OF PERPETUAL INJUNCTIONS.

Perpetual
injunctions
when granted.

54. Subject to the other provisions contained in, or referred to, by this chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II. of this Act.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely):—

- (a) Where the defendant is trustee of the property for the plaintiff;
- (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
- (c) where the invasion is such that pecuniary compensation would not afford adequate relief;
- (d) where it is probable that pecuniary compensation cannot be got for the invasion;
- (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Mandatory
injunctions.

55. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Injunction
when refused.

56. An injunction cannot be granted—

- (a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to stay proceedings in a Court not subordinate to that from which the injunction is sought;
- (c) to restrain persons from applying to any legislative body;
- (d) to interfere with the public duties of any department of the Government of India or the Local Government, or with the sovereign rights of a Foreign Government;
- (e) to stay proceedings in any criminal matter;
- (f) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (g) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (h) to prevent a continuing breach in which the applicant has acquiesced;
- (i) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust;
- (j) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court;
- (k) where the applicant has no personal interest in the matter.

Injunctions to
perform
negative
agreement.

57. Notwithstanding section 56, clause (f), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement, shall not preclude it from granting an injunction to perform the negative agreement; provided that the applicant has not failed to perform the contract so far as it is binding on him.

INDIAN LIMITATION ACT XV. of 1877.

Limitation of Suits, Appeals and Applications.

Dismissal of
suits, &c.
instituted, &c.
after period of
limitation.

4. Subject to the provisions contained in sections 5 to 25 (inclusive), every suit instituted, appeal presented, and application made, after the period of limitation prescribed therefor by the second schedule hereto annexed, shall be dismissed, although limitation has not been set up as a defence.

Explanation.—A suit is instituted, in ordinary cases, when the plaintiff is presented (a) to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is filed; and in the case of a claim against a Company which is being wound-up by the Court, when the claimant first sends in his claim to the official liquidator.

5. If the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, presented or made on the day that the Court re-opens : Provide where Court is closed when period expires.

Any appeal or application for a review of judgment may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not presenting the appeal or making the application within such period. Provide as to appeals and applications for review.

6. When, by any special or local law now or hereafter in force in British India, a period of limitation is specially prescribed for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed. Special and local laws of limitation.

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, shall be barred by any length of time. Suits against executors, trustees and their representatives.

12. In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded. Exclusion of day on which right to sue accrues.

In computing the period of limitation prescribed for an appeal, an application for leave to appeal as a pauper, and an application for a review of judgment the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed against or sought to be reviewed, shall be excluded. Exclusion in case of appeals and certain applications.

Where a decree is appealed against or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

15. In computing the period of limitation prescribed for any suit, the institution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn, shall be excluded. Exclusion of time during which commencement of suit is stayed by injunction or order.

SECOND SCHEDULE.

No. 101.—For a seaman's wages, three years, the end of the voyage during which the wages are earned.

No. 102.—For wages not otherwise expressly provided for by this schedule, three years, when the wages accrue due.

No. 112.—For a call by a Company registered under any Statute or Act, three years, when the call is payable.

No. 151.—From a decree or order of any of the High Courts of Judicature at Fort William, Madras and Bombay in the exercise of its original jurisdiction, twenty days, the date of the decree or order.

No. 156.—Under the Code of Civil Procedure to a High Court, except in the cases provided for by No. 151 and No. 153, ninety days, the date of the decree or order appealed against.

THE STAMP ACT I. OF 1879.

10. The following instruments may be stamped with adhesive stamps, namely :— Use of adhesive stamps.

- (a) instruments chargeable with the duty of one anna except parts of bills of exchange payable otherwise than on demand and drawn in sets ;
- (b) bills of exchange, cheques and promissory notes drawn or made out of British India ;
- (c) entry as an advocate, vakil or attorney on the roll of a High Court ;

(d) notarial acts; and

(e) transfers by endorsement of shares of public companies and associations.

Cancellation of
adhesive
stamps.

11. Whoever affixes any adhesive stamp to any instrument chargeable with duty and which has been executed by any person, shall, when affixing such stamp, cancel the same so that it cannot be used again, and whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again shall, so far as such stamp is concerned, be deemed to be unstamped.

Stock and
marketable
securities how
to be valued.

21. Where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable security, such duty shall be calculated on the value of such stock or security according to the average price thereof on the day of the date of the instrument.

Penalty for
executing, &c.,
instrument not
duly stamped.

61. Any person drawing, making, issuing, endorsing, or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange, cheque or promissory note without the same being duly stamped,

any person executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped, and

any person voting or attempting to vote under any proxy not duly stamped,

shall for every such offence be punished with fine which may extend to five hundred rupees:

Provided that, when any penalty has been paid in respect of any instrument under section thirty-four, section thirty-seven or section fifty, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

SCHEDULE I.

5. Agreement or memorandum of an agreement:—

(a) If relating to the sale of any Government security, share in a Company or Association or Bill of Exchange, one anna.

(b) Whereby the owner or occupier of land in a village in the Bombay Presidency agrees to relinquish his rights therein to the Government and to accept rights in other land in exchange for the right so relinquished, four annas.

(c) If not otherwise provided for by this Act, eight annas.

8. Articles of Association of a Company, twenty-five rupees.

17. Certificate or other document evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip or stock in or of any Company or Association, or to become proprietor of shares, scrip or stock in or of any Company or Association, one anna.

21. Conveyance, not being a transfer mentioned in No. 60:—

When the amount of the consideration for such conveyance as set forth therein does not exceed, Rs. 50, eight annas.

When it exceeds Rs. 50 but does not exceed, Rs. 100, one rupee.

For every Rs. 100 or part thereof in excess of Rs. 100 up to to Rs. 1,000, one Rupee.

and for every Rs. 500 or part thereof in excess of 1,000, five rupees.

40. Letter of allotment of Shares in any Company, or proposed Company, or in respect of any loan to be raised by any Company or proposed Company, one anna.

43. Memorandum of Association of a Company, fifteen rupees.

46. Note or Memorandum sent by a Broker or Agent to his principal, intimating the purchase or sale on account of such principal of any goods, stock or marketable security exceeding in value twenty rupees, one anna.

51. Proxy empowering any person to vote at any one meeting of—
- (a) Members of a Company whose stock or funds is or are divided into shares and transferable, one anna.
 - (b) Municipal Commissioners, one anna.
 - (c) Proprietors, Members or Contributors to the funds of any Institution, one anna.
60. Transfer :—
- (a) Of shares in a Company or Association, one-quarter of the duty payable on a Conveyance (No. 21).
 - (b) Of any interest secured by a Bond, Lease, Mortgage-deed or Policy of Insurance—1. If the duty on such Bond, Lease, Mortgage-deed or Policy does not exceed five rupees, the duty with which such Bond, Lease, Mortgage-deed or Policy of Insurance is chargeable,—2. In any other case, five rupees.
 - (c) Of any property under the Administrator-General's Act, 1874, Section 31, ten rupees.
 - (d) Of any trust-property from one trustee to another trustee without consideration, five rupees.

And by Schedule II. of that Act among the instruments exempted from Stamp Duty are—15. Receipts : (a) given for money or securities for money deposited in the hands of any banker, to be accounted for; Provided the same be not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for. Provided also, that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of or in any Company or Association, or proposed or intended Company or Association.

THE CODE OF CIVIL PROCEDURE ACT XIV. OF 1882.

The following sections of this Code are here printed for convenience of reference :—

17. Subject to the limitations aforesaid, all other suits shall be instituted in a Court within the local limits of whose jurisdiction—
- (a) the cause of action arises; or
 - (b) all the defendants, at the time of the commencement of the suit, actually and voluntarily reside, or carry on business, or personally work for gain; or
 - (c) any of the defendants, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain : provided that either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

Suits to be instituted where defendants reside or cause of action arose.

Explanation I.—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation II.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

SET-OFF.

111. If in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, and if in such claim of the defendant against the plaintiff both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, tender a written statement containing the particulars of the debt sought to be set-off.

Particulars of set-off to be given in written statement.

Inquiry.

The Court shall thereupon inquire into the same, and if it finds that the case fulfils the requirements of the former part of this section, and that the amount claimed to be set-off does not exceed the pecuniary limits of its jurisdiction, the Court shall set-off the one debt against the other.

Effect of set-off.

Such set-off shall have the same effect as a plaint in a cross-suit, so as to enable the Court to pronounce a final judgment in the same suit, both on the original and on the cross-claim; but it shall not affect the lien upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

INTERROGATORIES.**Service of interrogatories on officer of Corporation or Company.**

124. If any party to a suit be a body corporate or a joint stock Company, whether incorporated or not, or any other body of persons empowered by law to sue or be sued, whether in its own name or in the name of any officer or other persons, any opposite party may apply to the Court for an order allowing him to deliver interrogatories to any member or officer of such Corporation, Company or body, and an order may be made accordingly.

Power to refuse to answer interrogatories, as irrelevant, &c.

125. Any party called upon to answer interrogatories, whether by himself or by any such member or officer, may refuse to answer any interrogatory on the ground that it is irrelevant, or is not put *bonâ fide* for the purposes of the suit, or that the matter inquired after is not sufficiently material at that stage of the suit, or on any other like ground.

Power to demand admission of genuineness of documents.

128. Either party may, by a notice through the Court, within a reasonable time, not less than ten days before the hearing, require the other party to admit (saving all just exceptions to the admissibility of such document in evidence), the genuineness of any document material to the suit.

The admission shall also be made in writing signed by the other party or his pleader and filed in Court.

If such notice be not given, no costs of proving such document shall be allowed, unless the Judge otherwise orders.

If such notice is not complied with within four days after its being served, and the Judge thinks it reasonable that the admission should have been made, the party refusing shall bear the expense of proving such document, whatever may be the result of the suit.

COSTS.**Costs of applications.**

218. When disposing of any application under this Code, the Court may give to either party the costs of such application, or may reserve the consideration of such costs for any future stage of the proceedings.

Judgment to direct by whom costs to be paid.

219. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

Power of Court as to costs.

220. The Court shall have full power to give and apportion costs of every application and suit in any manner it thinks fit, and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power:

Provided that, if the Court directs that the costs of any application or suit shall not follow the event, the Court shall state its reasons in writing.

Every order relating to costs made under this Code and not forming part of a decree may be executed as if it were a decree for money.

Costs may be set-off against sum admitted or found to be due.

221. The Court may direct that the costs payable to one party by another shall be set-off against a sum which is admitted or is found in the suit to be due from the former to the latter.

CHAPTER XIX.—OF THE EXECUTION OF DECREES.**A. Of the Court in which Decrees may be executed.****Court by which decree may be executed.**

223. A decree may be executed either by the Court which passed it or by the Court to which it is sent for execution under the provisions hereinafter contained.

The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree, and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

The Court which passed a decree may of its own motion send it for execution to any Court subordinate thereto.

The Court to which a decree is sent under this section for execution shall certify to the Court which passed it the fact of such execution, or, where the former Court fails to execute the same, the circumstances attending such failure.

If the decree has been passed in a case cognizable by a Court of Small Causes and the Court which passed it wishes it to be executed in Calcutta, Madras, Bombay or Rangoon, such Court may send to the Court of Small Causes in Calcutta, Madras, Bombay or Rangoon, as the case may be, the copies and certificate respectively mentioned in clauses (a), (b) and (c) of section 224; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

If the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But if the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

224. The Court sending a decree for execution under section 223 shall send

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unexecuted; and

(c) a copy of any order for the execution of the decree, and, if no such order has been made, a certificate to that effect.

225. The Court to which a decree is so sent shall cause such copies and certificate to be filed, without any further proof of the decree or order for execution, or of the copies thereof, or of the jurisdiction of the Court which passed it, unless the former Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

226. When such copies are so filed, the decree or order may, if the Court to which it is sent be the District Court, be executed by such Court or by any subordinate Court which it directs to execute the same.

227. If the Court to which the decree is sent for execution be a High Court, the decree shall be executed by such Court in the same manner as if it had been made by such Court in the exercise of its ordinary original civil jurisdiction.

228. The Court executing a decree sent to it under this chapter shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal, as if the decree had been passed by itself.

Procedure when Court desires that its own decree shall be executed by another Court.

Court receiving copies of decree &c., to file same without proof.

Execution of decree or order by Court to which it is sent.

Execution by High Court of decree transmitted by other Court.

Powers of Court in executing transmitted decrees. Appeal from orders in executing such decrees.

Decrees of
Courts estab-
lished by
Government of
India in Native
States.

229. A decree of any Court established by the authority of the Governor-General in Council in the territories of any Foreign Prince or State, which cannot be executed within the jurisdiction of the Court by which it was made, may be executed in manner herein provided within the jurisdiction of any Court in British India.

B. *Of application for execution.*

Application for
execution.

230. When the holder of a decree desires to enforce it, he shall apply to the Court which passed the decree or to the officer, if any, appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof.

The Court may in its discretion refuse execution at the same time against the person and property of the judgment-debtor.

Where an application to execute a decree for the payment of money or delivery of other property has been made under this section and granted, no subsequent application to execute the same decree shall be granted after the expiration of twelve years from any of the following dates (namely):—

(a) the date of the decree sought to be enforced, or of the decree (if any) on appeal affirming the same, or

(b) where the decree or any subsequent order directs any payment of money, or the delivery of any property to be made at a certain date—the date of the default in making the payment or delivering the property in respect of which the applicant seeks to enforce the decree.

Nothing in this section shall prevent the Court from granting an application for execution of a decree after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application.

Notwithstanding anything herein contained, proceedings may be taken to enforce any decree within three years after the passing of this Code, unless when the period prescribed for taking such proceedings by the law in force immediately before the passing of this Code shall have expired before the completion of the said three years.

Application by
joint decree-
holder.

231. If a decree has been passed jointly in favour of more persons than one, any one or more of such persons, or his or their representatives, may apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the representative in interest of the deceased.

If the Court sees sufficient cause for allowing the decree to be executed on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

Application by
transferee of
decree.

232. If a decree be transferred by assignment in writing, or by operation of law, from the decree-holder to any other person, the transferee may apply for its execution to the Court which passed it; and, if that Court thinks fit, the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decreeholder:

Provided as follows:—

(a) where the decree has been transferred by assignment, notice in writing of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution:

(b) where a decree for money against several persons has been transferred to one of them it shall not be executed against the others.

233. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment debtor might have enforced against the original decree-holder.

Transferee to
hold subject
to equities
enforceable
against original
holder.

234. If a judgment-debtor dies before the decree has been fully executed, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

If judgment-debtor die before execution, application may be made against his representative.

Such representative shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel the said representative to produce such accounts as it thinks fit.

235. The application for the execution of a decree shall be in writing, verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars (namely)—

Contents of application for execution of decree.

- (a) the number of the suit;
- (b) the names of the parties;
- (c) the date of the decree;
- (d) whether any appeal has been preferred from the decree;
- (e) whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree;
- (f) whether any and what previous applications have been made for execution of the decree and with what result;
- (g) the amount of the debt or compensation, with the interest, if any, due upon the decree, or other relief granted thereby;
- (h) the amount of costs, if any, awarded;
- (i) the name of the person against whom the enforcement of the decree is sought; and
- (j) the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require.

236. Whenever an application is made for the attachment of any moveable property belonging to the judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

Application for attachment of moveable property to be accompanied with inventory.

237. Whenever an application is made for the attachment of any immovable property belonging to the judgment-debtor, it shall contain at the foot a description of the property sufficient to identify it, and also a specification of the judgment-debtor's share or interest therein to the best of the belief of the applicant and so far as he has been able to ascertain the same.

Further particulars when application is for attachment of immovable property.

Every such description and specification shall be verified in manner hereinbefore provided for the verification of plaints.

238. If the property be land registered in the Collector's office, the application for attachment shall be accompanied by an authenticated extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for such land, and the shares of the registered proprietors.

When application must be accompanied by extract from collector's register.

C.—*Staying Execution.*

239. The Court to which a decree has been sent for execution under this chapter shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was made, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto;

When Court may stay execution.

and in case the property or person of the judgment debtor has been seized under an execution, the Court which issued the execution may

order the restitution or discharge of such property or person pending the result of the application for such order.

Power to require security from, or impose conditions upon, judgment-debtor.

240. Before passing an order under section 239 to stay execution, or for the restitution of property or the discharge of the judgment debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

Liability of judgment debtor discharged to be re-taken.

241. No discharge under section 239 of the property or person of a judgment-debtor shall prevent it or him from being re-taken in execution of the decree sent for execution.

Order of Court which passed decree or of Appellate Court to be binding upon Court applied to.

242. Any order of the Court by which the decree was passed, or of such Court of Appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

Stay of execution pending suit between decree-holder and judgment-debtor.

243. If a suit be pending in any Court against the holder of a decree of such Court on the part of the person against whom the decree was passed, the Court may (if it think fit) stay execution on the decree, either absolutely or on such terms as it thinks fit, until the pending suit has been decided.

D.—Questions for Court executing Decree.

Questions to be decided by Court executing decree.

244. The following questions shall be determined by order of the Court executing a decree and not by separate suit (namely)—

(a) questions regarding the amount of any mesne profits as to which the decree has directed inquiry;

(b) questions regarding the amount of any mesne profits or interest which the decree has made payable in respect of the subject-matter of a suit, between the date of its institution and the execution of the decree, or the expiration of three years from the date of the decree;

(c) any other questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree.

Nothing in this section shall be deemed to bar a separate suit for mesne profits accruing between the institution of the first suit and the execution of the decree therein, where such profits are not dealt with by such decree.

E.—Of the Mode of executing Decrees.

Procedure on receiving application for execution of decree.

245. The Court, on receiving an application for the execution of a decree, shall ascertain whether such of the requirements of sections 235, 236, 237, and 239 as may be applicable to the case have been complied with; and if they have not been complied with, the Court may reject the application, or may allow it to be amended then and there, or within a time fixed by the Court. If the application be not so amended, it shall be rejected.

Every amendment made under this section shall be attested by the signature of the Judge.

Procedure on admitting application.

When the application is admitted, the Court shall enter in the register of the suit a note of the application and the date on which it was made, and shall order execution of the decree according to the nature of the application:

Provided that, in the case of a decree for money, the value of the property attached shall, as nearly as may be, correspond with the amount for which the decree has been made.

Cross-decrees.

246. If cross-decrees between the same parties for the payment of money be produced to the Court, execution shall be taken out only by the party who holds a decree for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

If the two sums be equal, satisfaction shall be entered upon both decrees.

Explanation I.—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court.

Explanation II.—This section applies where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

Explanation III.—This section does not apply unless the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits; and the sums due under the decrees are definite.

247. When two parties are entitled under the same decree to recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party; but satisfaction for the smaller sum shall be entered on the decree. Cross-claims under same decree.

When the amounts are equal, neither party shall take out execution, but satisfaction for each sum shall be entered on the decree.

248. The Court shall issue a notice to the party against whom execution is applied for, requiring him to shew cause, within a period to be fixed by the Court, why the decree should not be executed against him. Notice to shew cause why decree should not be executed.

(a) if more than one year has elapsed between the date of the decree and the application for its execution, or

(b) if the enforcement of the decree be applied for against the legal representative of a party to the suit in which decree was made:

Provided that no such notice shall be necessary

in consequence of more than one year having elapsed between the date of the decree and the application for execution, if the application be made within one year from the date of any decree passed on appeal from the decree sought to be executed, or of the last order against the party against whom execution is applied for, passed on any previous application for execution, or

in consequence of the application being against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him. Provviso.

Explanation.—In this section the phrase “the Court” means the Court by which the decree was passed, unless the decree has been sent to another Court for execution, in which case it means such other Court.

249. If the person to whom notice is issued under the last preceding section does not appear, or does not shew cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed. Procedure after issue of notice.

If he offers any objection to the enforcement of the decree, the Court shall consider such objection and pass such order as it thinks fit.

250. When the preliminary measures (if any) required by the foregoing provisions have been taken, the Court, unless it sees cause to the contrary, shall issue its warrant for the execution of the decree. Warrant when to issue.

251. Such warrant shall be dated the day on which it is issued, signed by the Judge or such officer as the Court appoints in this behalf, sealed with the seal of the Court, and delivered to the proper officer to be executed. Date, signature, seal and delivery.

And a day shall be specified in such warrant on or before which it must be executed, and the proper officer shall endorse thereon the day and manner in which it was executed, or, if it was not executed, the reason why it was not executed, and shall return it with such endorsement to the Court from which it issued.

252. If the decree be against a party as the legal representative of a deceased person, and the decree be for money to be paid out of the property of the deceased, it may be executed by the attachment and sale of any such property. Decree against representative of deceased for money to be paid out of deceased's property.

If no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property not duly applied by him, in the same manner as if the decree had been against him personally.

Decree against surety.

253. Whenever a person has, before the passing of a decree in an original suit, become liable as surety for the performance of the same or of any part thereof, the decree may be executed against him to the extent to which he has rendered himself liable in the same manner as a decree may be executed against a defendant :

Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety.

Decree for money.

254. Every decree or order directing a party to pay money, as compensation or costs, or as the alternative to some other relief granted by the decree or order, or otherwise, may be enforced by the imprisonment of the judgment-debtor, or by the attachment and sale of his property in manner hereinafter provided, or by both.

Decree for mesne profits or other matter, amount of which to be subsequently ascertained.

255. If the decree be for mesne profits or any other matter the amount of which in money is to be subsequently determined, the property of the judgment-debtor may, before the amount due from him under the decree has been ascertained, be attached as in the case of an ordinary decree for money.

Power to direct immediate execution for decree for money not exceeding Rs. 1,000.

256. When a decree is passed for a sum of money only, and the amount decreed does not exceed the sum of one thousand rupees, the Court may, when passing the decree, on the oral application of the decree-holder, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court, or against his moveable property within the same limits.

Modes of paying money under decree.

257. All money payable under a decree shall be paid as follows (namely)—

- (a) into the Court whose duty it is to execute the decree ; or
- (b) out of Court to the decree-holder ; or
- (c) otherwise as the Court which made the decree directs.

257A. Every agreement to give time for the satisfaction of a judgment-debt shall be void unless it is made for consideration and with the sanction of the Court which passed the decree, and such Court deems the consideration to be under the circumstances reasonable.

Agreement to give time to judgment-debtor.

Every agreement for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under the decree, shall be void unless it is made with the like sanction.

Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt ; and the surplus, if any, shall be recoverable by the judgment-debtor.

Agreement for satisfaction of judgment-debt.

258. If any money payable under a decree is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or if any payment is made in pursuance of an agreement of the nature mentioned in section 257A, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree.

The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified ; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or having appeared fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

No such payment or adjustment shall be recognised by any Court unless it has been certified as aforesaid.

259. If the decree be for any specific moveable, or for any share in a specific moveable, or for the recovery of a wife, it may be enforced by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the imprisonment of the judgment-debtor, or by attaching his property, or by both imprisonment and attachment if necessary.

Decrees for specific moveables or recovery of wives.

When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation, as it thinks fit, and shall pay the balance, if any, to the judgment debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease to exist.

260. When the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights or for the performance of or abstention from any other particular act, has been made, has had an opportunity of obeying the decree or injunction and has wilfully failed to obey it, the decree may be enforced by his imprisonment, or by the attachment of his property, or by both.

Decree for specific performance or restitution of conjugal rights.

When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, the property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance, if any, to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if at the end of one year from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist.

261. If the decree be for the execution of a conveyance, or for the endorsement of a negotiable instrument, and the judgment debtor neglects or refuses to comply with the decree, the decree-holder may prepare the draft of a conveyance or endorsement in accordance with the terms of the decree, and deliver the same to the Court.

Decree for execution of conveyances, or endorsement of negotiable instruments.

The Court shall thereupon cause the draft to be served on the judgment-debtor in manner hereinbefore provided for serving a summons, together with a notice in writing stating that his objections, if any, thereto shall be made within such time (mentioning it) as the Court fixes in this behalf.

The decree-holder may also tender a duplicate of the draft to the Court for execution, upon the proper stamp-paper if a stamp is required by law.

On proof of such service, the Court, or such officer as it appoints in this behalf, shall execute the duplicate so tendered, or may, if necessary alter the same, so as to bring it into accordance with the terms of the decree, and execute the duplicate so altered:

Provided that, if any party object to the draft so served as aforesaid, his objections shall, within the time so fixed, be stated in writing and argued before the Court, and the Court shall thereupon pass such order as it thinks fit, and execute, or alter and execute, the duplicate in accordance therewith.

262. The execution of a conveyance, or the endorsement of a negotiable instrument, by the Court under the last preceding section may be in the following form: "C. D., Judge of the Court of (or as the case may be), for A. B., in a suit by E. F., against A. B.," or in such other form as the High Court may from time to time prescribe, and shall have

Form and effect of execution of conveyance by Court.

Decree for
immoveable
property.

the same effect as the execution of the conveyance or endorsement of the instrument by the party ordered to execute or endorse the same.

263. If the decree be for the delivery of any immoveable property, possession thereof shall be delivered over to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, and, if need be, by removing any person bound by the decree who refuses to vacate the property.

Delivery of
immoveable
property when
in occupancy of
tenant.

264. If the decree be for the delivery of any immoveable property in the occupancy of a tenant or other person entitled to occupy the same, and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum, or in such other mode as is customary, at some convenient place, the substance of the decree in regard to the property :

Provided that, if the occupant can be found, a notice in writing containing such substance shall be served upon him, and in such case no proclamation need be made.

Partition of
estate or
separation
of share.

265. If the decree be for the partition or for the separate possession of a share of an undivided estate paying revenue to Government, the partition of the estate or the separation of the share shall be made by the Collector and according to the law, if any, for the time being in force for the partition, or the separate possession of shares, of such estates.

F. Of Attachment of Property.

Property liable
to attachment
and sale in
execution of
decree.

266. The following property is liable to attachment and sale in execution of a decree (namely), lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory-notes, Government securities, bonds or other securities for money, debts, shares in the capital or joint stock of any railway, banking or other public Company or Corporation, and, except as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, and whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf :

Provided that the following particulars shall not be liable to such attachment or sale (namely)—

- (a) the necessary wearing apparel of the judgment-debtor, his wife and children ;
- (b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle as may in the opinion of the Court be necessary to enable him to earn his livelihood as such ;
- (c) the materials of houses and other buildings belonging to and occupied by agriculturists ;
- (d) books of account ;
- (e) mere rights to sue for damages ;
- (f) any right of personal service ;
- (g) stipends and gratuities allowed to military and civil pensioners of Government, and political pensions ;
- (h) the salary of a public officer or of any servant to a Railway Company, when such salary does not exceed twenty rupees *per mensem*, and one moiety of the salary of any such officer or servant when his salary exceeds that amount ;
- (i) the pay and allowances of persons to whom the Native Articles of War apply ;
- (j) the wages of labourers and domestic servants ;
- (k) an expectancy of succession by survivorship or other merely contingent or possible right or interest ;
- (l) a right to future maintenance.

Explanation—The particulars mentioned in clauses (g), (h), (i) and (j) are exempt from attachment or sale whether before or after they are actually payable :

Provided also that nothing in this section shall be deemed

(a) to exempt the materials of houses and other buildings from attachment or sale in execution of decrees for rent, or

(b) to affect the Army Act, 1881, or any similar law for the time being in force.

267. The Court may, of its own motion or on the application of the decree-holder, summon any person whom it thinks necessary, and examine him in respect to any property liable to be seized in satisfaction of the decree, and may require the person summoned to produce any document in his possession or power relating to such property, and, before issuing the summons of its own motion, shall declare the person on whose behalf the summons is so issued.

Power to summon and examine persons as to property liable to be seized.

268. In the case of (a) a debt not secured by a negotiable instrument, (b) a share in the capital of any public Company or Corporation, (c) other moveable property not in the possession of the judgment-debtor except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting,

Attachment of debt, share and other property not in possession of judgment-debtor.

(a) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court;

(b) in the case of the share, the person in whose name the share may be standing, from transferring the same or receiving any dividend thereon;

(c) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

A copy of such order shall be fixed up in some conspicuous part of the Court-house, and another copy of the same shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the Company or Corporation, and in the case of the other moveable property [except as aforesaid], to the person in possession of the same.

A debtor prohibited under clause (a) of this section may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct, until the further orders of the Court.

A copy of every such order shall be fixed up in a conspicuous part of the Court-house and shall be served on the officer so required.

Every such officer may from time to time pay into Court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor.

269. If the property be moveable property in the possession of the judgment-debtor, other than the property mentioned in the first proviso to section 268, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Attachment of moveable property in possession of judgment-debtor.

Provided that when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody will exceed its value, the proper officer may sell it at once.

Proviso.

The Local Government may, from time to time, make rules for the maintenance and custody, while under attachment, of live-stock and other moveable property, and the officer attaching property under this section shall, notwithstanding the provisions of the former part of this section, act in accordance with such rules.

Power to make rules for maintenance of attached live-stock.

270. If the property be a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to the further orders of the Court.

Attachment of negotiable instruments.

Seizure of
property in
building.

271. No person executing any process under this Code directing or authorizing seizure of moveable property shall enter any dwelling-house after sunset and before sunrise, or shall break open any outer door of a dwelling-house. But, when any such person has duly gained access to any dwelling-houses, he may unfasten and open the door of any room in which he has reason to believe any such property to be :

Seizure of
property in
zenanas.

Provided that if the room be in the actual occupancy of a woman, who according to the customs of the country does not appear in public, the person executing the process shall give notice to her that she is at liberty to withdraw ; and after allowing a reasonable time for such woman to withdraw, and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

Attachment of
property
deposited in
Court or with
Government
officer.

272. If the property be deposited in, or be in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice issues.

Proviso.

Provided that if such property is deposited in, or is in the custody of, a Court, any question of title of priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment, or otherwise, shall be determined by such Court.

Attachment of
decree for
money.

273. If the property be a decree for money passed by the Court which passed the decree sought to be executed, the attachment shall be made by an order of the Court directing the proceeds of the former decree to be applied in satisfaction of the latter decree.

If the property be a decree for money passed by any other Court, the attachment shall be made by a notice in writing to such Court under the hand of the Judge of the Court which passed the decree sought to be executed, requesting the former Court to stay the execution of its decree until such notice is cancelled by the Court from which it was sent. The Court receiving such notice shall stay execution accordingly, unless and until

(a) the Court which passed the decree sought to be executed cancels the notice, or

(b) the holder of the decree sought to be executed applies to the Court receiving such notice to execute its own decree.

On receiving such application, the Court shall proceed to execute the decree and apply the proceeds in satisfaction of the decree sought to be executed.

Attachment of
other decrees.

In the case of all other decrees the attachment shall be made by notice in writing, under the hand of the Judge of the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way ; and, when such decree has been passed by any other Court, also by sending to such Court a like notice in writing to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent. Every Court receiving such notice shall give effect to the same until it is so cancelled.

Decree-holders
to give inform-
ation.

The holder of any decree attached under this section shall be bound to give the Court executing the same such information and aid as may reasonably be required.

Attachment of
immoveable
property.

274. If the property be immoveable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from receiving the same from him by purchase, gift, or otherwise.

The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be fixed up in a conspicuous part of the property and of the Court-house.

When the property is land paying revenue to Government, a copy of the order shall also be fixed up in the office of the Collector of the District in which the land is situate.

275. If the amount decreed with costs and all charges and expenses resulting from the attachment of any property be paid into Court, or if satisfaction of the decree be otherwise made through the Court, or if the decree is set aside or reversed, an order shall be issued, on the application of any person interested in the property, for the withdrawal of the attachment.

Order for withdrawal of attachment after satisfaction of decree.

276. When an attachment has been made by actual seizure or by written order duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, mortgage or otherwise, and any payment of the debt or dividend, or a delivery of the share, to the judgment-debtor during the continuance of the attachment, shall be void as against all claims enforceable under the attachment.

Private alienation of property after attachment to be void.

277. If the property attached is coin or currency-notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

Court may direct coin or currency-notes attached to be paid to party entitled.

278. If any claim be preferred to, or any objection be made to the attachment of, any property attached in execution of a decree, on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:

Investigation of claim to and objections to attachment of attached property.

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

If the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

Postponement of sale.

279. The claimant or objector must adduce evidence to shew that at the date of the attachment he had some interest in, or was possessed of, the property attached.

Evidence to be adduced by claimant.

280. If upon the said investigation the Court is satisfied that, for the reason stated in the claim or objection, such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall pass an order for releasing the property wholly or to such extent as it thinks fit, from attachment.

Release of property from attachment.

281. If the Court is satisfied that the property was, at the time it was attached, in possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

Disallowance of claim to release of property attached.

282. If the Court is satisfied that the property is subject to a mortgage or lien in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or lien.

Continuance of attachment subject to claim of incumbrancer.

283. The party against whom an order under sections 280, 281 or 282 is passed may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

Saving of suits to establish right to attached property.

284. Any Court may order that any property which has been attached or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Power to order property attached to be sold, and proceeds to be paid to person entitled.

Property attached in execution of decrees of several Courts.

285. Where property not in the custody of any Court has been attached in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof, shall be the Court of highest grade or, where there is no difference in grade between such Courts, the Court under whose decrees the property was first attached.

G. Of Sale and Delivery of Property.

(a). General Rules.

Sales by whom conducted and how made.

286. Sales in execution of decrees shall be conducted by an officer of the Court or by any other person whom the Court may appoint, and, except as provided in section 286, shall be made by public auction in manner hereinafter mentioned.

Proclamation of sales by public auction.

287. When any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court. Such proclamation shall state the time and place of sale, and shall specify as fairly and accurately as possible—

(a) the property to be sold ;

(b) the revenue assessed upon the estate or part of the estate, when the property to be sold is an interest in an estate or a part of an estate paying revenue to Government ;

(c) any incumbrance to which the property is liable ;

(d) the amount for the recovery of which the sale is ordered ; and

(e) every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property.

For the purpose of ascertaining the matters so to be specified, the Court may summon any person whom it thinks necessary, and examine him in respect to any such matters, and require him to produce any document in his possession or power relating thereto.

Rules to be made by High Court.

The High Court shall, as soon as may be after this Code comes into force, make rules for the guidance of the Courts in exercise of their duties under this section. The High Court may from time to time alter any rules so made. All such rules shall be published in the local official Gazette and shall thereupon have the force of law. As regards his own Court and the Court of Small Causes at Rangoon, the Recorder of Rangoon shall be deemed to be a "High Court" within the meaning of this paragraph.

Nothing in this section shall apply to cases in which the execution of the decree has been transferred to the Collector.

Indemnity of Judges, &c.

288. No Judge or other public officer shall be answerable for any error, misstatement or omission in any proclamation under section 287, unless the same has been committed or made dishonestly.

Mode of making proclamation.

289. The proclamation shall be made, in manner prescribed by section 274, on the spot where the property is attached, and a copy thereof shall then be fixed up in the Court-house and, in the case of land paying revenue to Government, also in the Collector's office.

If the Court so direct, such proclamation shall also be published in the local official Gazette and in some local newspaper, and the costs of such publication shall be deemed to be costs of the sale.

Time of sale.

290. Except in the case of property mentioned in the proviso to section 269, no sale under this Chapter shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been fixed up in the Court-house of the Judge ordering the sale.

Power to adjourn sale.

291. The Court may in its discretion adjourn any sale under this Chapter (other than a sale by the Collector) to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment : provided that when the sale is made in, or within the precincts of, the Court-house, no such

adjournment shall be made without the leave of the Court. Whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor consents to waive it. Every such sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to such officer, or proof is given to his satisfaction, that the amount of such debt and costs has been paid into the Court that ordered the sale.

Stoppage of sale on tender of debt and costs, or on proof of payment.

292. No officer having any duty to perform in connection with any sale under this Chapter shall either directly or indirectly bid for, acquire, or attempt to acquire, any interest in any property sold at such sale.

Officers concerned in execution sales not to bid for or buy property sold.

293. The deficiency of price (if any) which may happen on a re-sale under this Code by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court by the officer holding the sale,

Defaulting purchaser answerable for loss by re-sale.

and shall, at the instance of either the judgment-creditor or the judgment-debtor, be recoverable from the defaulter under the rules contained in this Chapter for the execution of a decree for money.

294. No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

Decree-holder not to bid for or buy property without permission.

When a decree-holder purchases with such permission, the purchase money and the amount due on the decree may, if he so desires, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

If decree-holder purchase, amount of decree may be taken as payment.

When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder.

295. Whenever assets are realized by sale or otherwise in execution of a decree, and more persons than one have, prior to the realization, applied to the Court by which such assets are held for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, the assets, after deducting the costs of the realization, shall be divided rateably among all such persons:

Proceeds of execution sale to be divided rateably among decree-holders.

Provided as follows:—

(a) when any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not as such be entitled to share in any surplus arising from such sale:

Proviso where property is sold subject to mortgage.

(b) when any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the assent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same right against the proceeds of the sale as he had against the property sold.

(c) when immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

Proviso.

first, in defraying the expenses of the sale;

secondly, in discharging the interest and principal-money due on the incumbrance;

thirdly, in discharging the interest and principal-moneys due on subsequent incumbrances (if any); and

fourthly, rateably among the holders of decrees for money against the judgment-debtor, who have, prior to the sale of the said property applied to the Court which made the decree ordering such sale for execution of such decrees and have not obtained satisfaction thereof.

If all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

Nothing in this section affects any right of the Government.

(b). *Rules as to Moveable Property.*

Rules as to negotiable instruments and shares in public Companies.

Payment for other moveable property sold.

Irregularity not to vitiate sale of moveable property, but any person injured may sue.

Delivery of moveable property actually seized.

Delivery of moveable property to which judgment-debtor entitled subject to lien.

Delivery of debts and of shares in public Companies.

Transfer of negotiable instruments and shares.

Vesting order in case of other property.

What Courts may order sales of land.

296. If the property to be sold be a negotiable instrument or a share in any public Company or Corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker at the market-rate of the day.

297. In the case of other moveable property, the price of each lot shall be paid for at the time of sale, or as soon after as the officer holding the sale directs, and, in default of payment, the property shall forthwith be again put up and sold.

On payment of the purchase-money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

298. No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such other person be the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

299. When the property sold is a negotiable instrument or other moveable property, of which actual seizure has been made, the property shall be delivered to the purchaser.

300. When the property sold is any moveable property to which the judgment-debtor is entitled subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

301. When the property sold is a debt not secured by a negotiable instrument, or is a share in any public Company, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the Manager, Secretary or other proper officer of the Company from permitting any such transfer or making any such payment to any person except the purchaser.

302. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public Company is standing, is required to transfer such instrument or share, the Judge may endorse the instrument or the certificate of the share, or may execute such other document as may be necessary.

The endorsement or execution shall be in the following form or to the like effect:—"A. B., by C. D., Judge of the Court of (or as the case may be); in a suit by E. F. against A. B."

Until the transfer of such instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same; and any endorsement made, or document executed, or receipt signed, as aforesaid, shall be as valid and effectual for all purposes as if the same had been made or executed or signed by the party himself.

303. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

(c).—*Rules as to Immoveable Property.*

304. Sales of immoveable property in execution of a decree may be ordered by any Court other than a Court of Small Causes.

305. When an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may on his application postpone the sale of property comprised in the order for sale, for such period as it thinks proper, to enable him to raise the amount.

Postponement of sale of land to enable defendant to raise amount of decree.

In such case the Court shall grant a certificate to the judgment-debtor authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in section 276, to make the proposed mortgage, lease or sale: provided that all moneys payable under such mortgage, lease or sale, shall be paid into Court and not to the judgment-debtor:

Certificate to purchaser of judgment-debtor.

Provided also that no mortgage, lease or sale under this section shall become absolute until it has been confirmed by the Court.

306. On every sale of immoveable property under this chapter, the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per centum on the amount of his purchase-money to the officer conducting the sale, and, in default of such deposit, the property shall forthwith be put up again and sold.

Deposit by purchaser of immoveable property.

307. The full amount of purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office-day after the fifteenth day.

Time for payment in full.

308. In default of payment within the period mentioned in the last preceding section, the deposit, after defraying the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

Procedure in default of payment.

309. Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh notification in the manner and for the period hereinbefore prescribed for the sale.

Notification on re-sale of immoveable property.

310. When the property sold in execution of a decree is a share of undivided immoveable property, and two or more persons, of whom one is a co-sharer, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the co-sharer.

Co-sharer of share of undivided estate sold in execution to have preference in bidding.

311. The decree-holder, or any person whose immoveable property has been sold under this chapter, may apply to the Court to set aside the sale on the ground of a material irregularity in publishing or conducting it;

Application to set aside sale of land on ground of irregularity.

but no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

312. If no such application as is mentioned in the last preceding section be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale as regards the parties to the suit and the purchaser.

Effect of objection being disallowed and

If such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale.

of its being allowed.

No suit to set aside, on the ground of such irregularity, an order passed under this section, shall be brought by the party against whom such order has been made.

313. The purchaser at any such sale may apply to the Court to set aside the sale, on the ground that the person whose property purported to be sold had no "saleable interest" therein, and the Court may make such order as it thinks fit; provided that no order to set aside a sale shall be made, unless the judgment-debtor and the decree-holder have had opportunity of being heard against such order.

Application to set aside sale on ground of judgment-debtor having no saleable interest.

Confirmation of sale.

If sale set aside, price to be returned to purchaser.

Certificate to purchaser of immoveable property.

Bar to suit against purchaser buying benami.

Delivery of immoveable property in occupancy of judgment-debtor.

Delivery of immoveable property in occupancy of tenant.

Power to prescribe rules for transferring to Collector execution of certain decrees.

Power to prescribe rules as to transmission, execution and retransmission of decrees.

Power of Collector when execution of decree is so transferred.

314. No sale of immoveable property in execution of a decree shall become absolute until it has been confirmed by the Court.

315. When a sale of immoveable property is set aside under section 312 or 313,

or when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold and the purchaser is for that reason deprived of it,

the purchaser shall be entitled to receive back his purchase-money (with or without interest as the Court may direct) from any person to whom the purchase-money has been paid.

The re-payment of the said purchase-money and of the interest (if any) allowed by the Court may be enforced against such person under the rules provided by this Code for the execution of a decree for money.

316. When a sale of immoveable property has become absolute in manner aforesaid, the Court shall grant a certificate stating the property sold and name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date of the confirmation of the sale; and, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate and not before: provided that the decree under which the sale took place was still subsisting at that date.

317. No suit shall be maintained against the certified purchaser on the ground that the purchase was made on behalf of any other person, or on behalf of some one through whom such other person claims.

Nothing in this section shall bar a suit to obtain a declaration that the name of the certified purchaser was inserted in the certificate fraudulently or without the consent of the real purchaser.

318. When the property sold is in the occupancy of the judgment-debtor or of some person on his behalf, or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property, and a certificate in respect thereof has been granted under section 316, the Court shall, on application by the purchaser, order delivery to be made by putting the purchaser, or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

319. When the property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a certificate in respect thereof has been granted under section 316, the Court shall order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or in such other mode as may be customary, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

320. The local Government may, with the sanction of the Governor-General in Council, declare by notification in the official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immoveable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immoveable property, shall be transferred to the Collector, and rescind or modify any such declaration.

The local Government may also, notwithstanding anything hereinbefore contained, from time to time prescribe rules for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for re-transmitting the decree from the Collector to the Court.

321. When the execution of a decree has been so transferred, the Collector may--

(a) proceed as the Court would proceed under section 305; or

(b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging the whole or any part of the property ordered to be sold; or

(c) sell the property ordered to be sold or so much thereof as may be necessary.

322. When the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if after such enquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

Procedure of Collector when execution of decree so transferred.

322A. In the case mentioned in section 322, the Collector shall publish a notice calling upon—

Notice to be given to decree-holders and to persons having claims on property.

(a) every person holding a decree for money against the judgment-debtor capable of execution by sale of his immoveable property and which such decree-holder desires to have so executed, and every holder of a decree for money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder;

(b) every person having any claim on the said property, to submit to the Collector a statement of such claim, and to produce the documents, if any, by which it is evidenced.

Such notice shall be in the language of the district, and shall allow a period of sixty days from the date of its publication for compliance therewith. It shall be published by being posted in the court-house of the Court which made the original order under section 304, and at such other places (if any) as the Collector thinks fit. Where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

322B. Upon the expiration of the said period the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree holders or claimants (if any) may desire to make, and for holding such enquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims, and of the judgment-debtor's immoveable property, and may, from time to time, adjourn such hearing and enquiry.

Amount of money-decrees to be ascertained, and immoveable property available for their satisfaction.

If there be no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

If any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order under section 304, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof be within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector. The Collector shall then draw up a statement as above provided in accordance with such decision.

222C. The Collector may, instead of himself issuing the notices and holding the enquiry required by sections 322A and 322B, draw up a statement specifying the circumstances of the judgment-debtor and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry

When District Court may issue notices and hold inquiry.

and draw up the statement required by sections 322A and 322B, and transmit such statement to the Collector.

Effect of
decision of
Court as to
dispute arising
under Section
322B or 322C.

322D. The decision by the Court of any dispute arising under section 322B or section 322C shall, as between the parties thereto, have the force of, and be appealable, as, a decree.

Scheme for
liquidation of
money-decrees.

323. Whenever the amount to be recovered and the property available have been determined as provided in section 322B or 322C, the Collector may—

(1) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property ; or if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale,

(2) raise such amount and interest (notwithstanding any order under section 304),

(a) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property ; or

(b) by mortgaging the whole or any part of such property ; or

(c) by selling part of such property ; or

(d) by letting on farm, or managing by himself or another, the whole or any part of such property, for any term not exceeding twenty years from the date of the order of sale ; or

(e) partly by one of such modes, and partly by another or others of such modes.

(3) For the purpose of managing under this section the whole or any part of such property, the Collector may exercise all the powers of its owner.

(4) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable, or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this paragraph, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

In proceeding under paragraphs (2), (3) and (4) of this section, the Collector shall be subject to such rules consistent with this Act as may, from time to time, be made in this behalf by the Chief Controlling Revenue authority.

Recovery of
balance, if any,
after letting or
management.

324. If, on the expiration of the letting or management under section 323, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks of the date of such notice, he will proceed to sell the whole or a sufficient part of the said property ; and, if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

Collector to
render accounts
to Civil Court.

324A. The Collector shall, from time to time, render to the Court which made the original order under section 304 an account of all monies which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this chapter, and shall hold the balance at the disposal of the Court.

Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and (if the Collector so directs) the expenses of witnesses summoned by him.

Such balance shall be applied by the Court as follows:—

firstly, in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and

Application of balance.

secondly, where the Collector has proceeded under section 321, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property or otherwise, as the Court may under section 295 direct; or

thirdly, where the Collector has proceeded under section 322, in keeping down the interest on incumbrances on the property, and (when the judgment-debtor has no other sufficient means of subsistence) in providing for his subsistence to such amount as the Court thinks fit; and in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered;

and no other holder of a decree for money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied;

and the residue, if any, shall be paid to the judgment-debtor or such other person, if any, as the Court directs.

325. When the Collector sells any property under this chapter, he shall put it up to public auction, in one or more lots, as he thinks fit, and may—

Sales how to be conducted.

(a) fix a reasonable reserved price for each lot;

(b) adjourn the sale for a reasonable time, whenever he deems the adjournment necessary for the purpose of obtaining a fair price for the property, recording his reasons for such adjournment;

(c) buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit.

325A. So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by sections 322 to 325 (both inclusive), the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease, or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for money.

Restriction as to alienation by judgment-debtor or his representative and prosecution of remedies by decree-holders.

During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under section 323.

The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this section in respect of any remedy of which the decree-holder has thereby been temporarily deprived.

325B. When the property of which the sale has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by sections 321 to 325 (both inclusive) shall, from time to time, be exercised and performed by such one of the Collectors of the said districts as the Local Government may by general rule or special order direct.

Provision where property is in several districts.

325C. In exercising the powers conferred on him by sections 322 to 325 (both inclusive), the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents.

Powers of Collector to compel attendance of parties and witnesses and production of documents.

When Court may authorize Collector to stay public sale of land.

326. When, in any local area in which no declaration under section 320 is in force, the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation or management of the land or share, the Court may authorize the Collector to provide for such satisfaction in the manner recommended by him, instead of proceeding to a sale of the land or share. In such case the provisions of sections 320, paragraph two, to 325C (both inclusive) shall apply, as far as they are applicable.

Local rules as to sales of land in execution of decrees for money.

327. The Local Government may, from time to time, with the sanction of the Governor-General in Council, make special rules for any local area imposing conditions in respect of sale of any class of interests in land in execution of decrees for money, where such interests are so uncertain or undetermined as, in the opinion of the Local Government, to make it impossible to fix their value:

and if, when this Code comes into operation in any local area, any special rules as to sale of land in execution of decrees are in force therein, the Local Government may continue such rules in force, or may, from time to time, with the sanction of the Governor-General in Council, modify the same.

All rules so made or continued, and all such modifications of the same, shall be published in the local official Gazette, and shall thereupon have the force of law.

H.—Of Resistance to Execution.

Procedure in case of obstruction to execution of decree.

328. If, in the execution of a decree for the possession of property, the officer charged with the execution of the warrant is resisted or obstructed by any person, the decree-holder may complain to the Court at any time within one month from the time of such resistance or obstruction.

The Court shall fix a day for investigating the complaint, and shall summon the party against whom the complaint is made to answer the same.

Procedure in case of obstruction by judgment-debtor or at his instigation.

329. If the Court is satisfied that the obstruction or resistance was occasioned by the judgment-debtor or by some person at his instigation, the Court shall inquire into the matter of the complaint, and pass such order as it thinks fit.

Procedure when obstruction continues.

330. If the Court is satisfied that the resistance or obstruction was without any just cause, and that the complainant is still resisted or obstructed in obtaining possession of the property by the judgment-debtor or some other person at his instigation, the Court may, at the instance of the decree-holder and without prejudice to any penalty to which such judgment-debtor or other person may be liable, under the Indian Penal Code or any other law, for such resistance or obstruction, commit the judgment-debtor or such other person to jail for a term which may extend to thirty days, and direct that the decree-holder be put into possession of the property.

Procedure in case of obstruction by claimant in good faith, other than judgment-debtor.

331. If the resistance or obstruction has been occasioned by any person other than the judgment-debtor claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant;

and the Court shall, without prejudice to any proceedings to which the claimant may be liable under the Indian Penal Code or any other law for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of Chapter V,

and shall pass such order as it thinks fit for executing or staying execution of the decree.

Every such order shall have the same force as a decree, and shall be subject to the same conditions as to appeal or otherwise.

332. If any person other than the judgment-debtor is dispossessed of any property in execution of a decree, and such person disputes the right of the decree-holder to dispossess him of such property under the decree, on the ground that the property was *bona fide* in his possession on his own account or on account of some person other than the judgment-debtor, and that it was not comprised in the decree, or that, if it was comprised in the decree, he was not a party to the suit in which the decree was passed, he may apply to the Court.

Procedure in case of person dispossessed of property, disputing right of decree-holder to be put into possession.

If, after examining the applicant it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute; and if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and if it does not find as aforesaid, it shall dismiss the application.

In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified.

The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final.

333. Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made.

Transfer of property by judgment-debtor after institution of suit.

334. If the purchaser of any immoveable property sold in execution of a decree be resisted or obstructed by the judgment-debtor or any one on his behalf in obtaining possession of the property, the provisions of this chapter relating to resistance or obstruction to a decree-holder in obtaining possession of the property adjudged to him shall be applicable.

Resisting or obstructing purchaser in obtaining possession of immoveable property.

335. If the purchaser of any such property is resisted or obstructed by any person other than the judgment-debtor claiming in good faith a right to the present possession thereof, or if, in delivering possession thereof, any such person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed, shall inquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit.

Obstructions by claimant other than judgment-debtor.

The party against whom such order is passed may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final.

I.—Of Arrest and Imprisonment.

A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall as soon as practicable be brought before the Court, and his imprisonment may be in the civil jail of the district in which the Court ordering the imprisonment is situate, or, when such jail does not afford suitable accommodation, in any other place which the Local Government may appoint for the confinement of persons ordered by the Courts of such district to be imprisoned:

Place of judgment-debtor's imprisonment.

Provided as follows:—

(a) for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset or before sunrise, and no outer door of a dwelling-house shall be broken open. But, when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found: provided that, if the room be in the actual occupancy of a woman who is not the judgment-debtor, and who according to the customs of the country does not appear in public, the officer shall give notice to her that she is at liberty to with-

draw; and, after allowing a reasonable time for her to withdraw and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of making the arrest:

Proviso.

(b) when the decree in execution of which a judgment-debtor is arrested is a decree for money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

The Local Government may, by notification published in the official Gazette, direct that whenever a judgment-debtor is arrested in execution of a decree for money and brought before the Court under this section, the Court shall inform him that he may apply under Chapter XX. to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of his application and if he places all his property in possession of a receiver appointed by the Court.

If after such publication the judgment-debtor express his intention so to apply, and if he furnish sufficient security that he will appear when called upon, and that he will within one month apply under section 344 to be declared an insolvent, the Court shall release him from arrest:

But if he fails so to apply, the Court may either direct the security to be realised or commit him to jail in execution of the decree.

In the case of a surety such security may be realised in manner provided by section 253.

Warrant for arrest to direct judgment-debtor to be brought up.

337. Every warrant for the arrest of the judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs, if any, to which he is liable, be sooner paid.

Scales of subsistence-allowances.

338. The Local Government may, from time to time, prescribe scales, graduated according to rank, race, and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

Judgment-debtor's subsistence-money.

339. No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as having regard to the scales so fixed, the Judge thinks sufficient for the subsistence of the judgment-debtor from his arrest until he can be brought before the Court.

When a judgment-debtor is committed to jail in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the said scales, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

The monthly allowance fixed by the Court shall be supplied by the party on whose application the decree has been executed, by monthly payments in advance before the first day of each month.

The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to jail, and the subsequent payment (if any) shall be made to the officer in charge of the jail.

Subsistence-money to be costs in suit.

340. Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in jail shall be deemed to be costs in the suit:

Provided that the judgment-debtor shall not be detained in jail or arrested on account of any sum so disbursed.

Release of judgment-debtor.

341. The judgment-debtor shall be discharged from jail,

(a) on the amount mentioned in the warrant of committal being paid to the officer in charge of the jail; or

(b) on the decree being otherwise fully satisfied; or

(c) at the request of the person on whose application he has been imprisoned; or

(d) on such person omitting to pay the allowance as hereinbefore directed; or

(e) if the judgment-debtor be declared an insolvent, as hereinafter provided; or

(f) when the term of his imprisonment, as limited by section 342, is fulfilled :

Provided that, in the second, third and fifth cases mentioned in this section, the judgment-debtor shall not be discharged without the order of the Court.

A judgment-debtor discharged under this section is not thereby discharged from his debt ; but he cannot be re-arrested under the decree in execution of which he was imprisoned.

342. No person shall be imprisoned in execution of a decree for a longer period than six months ;
or for a longer period than six weeks if the decree be for the payment of a sum of money not exceeding fifty rupees.

343. The officer entrusted with the execution of the warrant shall endorse thereupon the day on, and the manner in, which it was executed, and, if the latest day specified in the warrant for the return thereof has been exceeded, the reason of the delay, or if it was not executed, the reason why it was not executed, and shall return the warrant with such endorsement to the Court.

If the endorsement is to the effect that such officer is unable to execute the warrant the Court shall examine him on oath touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability and shall record the result.

CHAPTER XXIX.—SUITS BY AND AGAINST CORPORATIONS AND COMPANIES.

435. In suits by a Corporation, or by a Company authorized to sue and be sued in the name of an officer or of a trustee, the plaint may be subscribed and verified on behalf of the Corporation or Company by any director, secretary or other principal officer of the Corporation or Company, who is able to depose to the facts of the case.

436. When the suit is against a Corporation, or against a Company authorized to sue and be sued in the name of an officer or of a trustee, the summons may be served—

(a) by leaving it at the registered office (if any) of the Corporation or Company, or

(b) by sending it by post in a letter addressed to such officer or trustee, at the office (or if there be more officers than one, at the principal office in British India) of the Corporation or Company, or

(c) by giving it to any director, secretary or other principal officer of the Corporation or Company ;

and the Court may require the personal appearance of any director, secretary or other principal officer of the Corporation or Company who may be able to answer material questions relating to the suit.

A.—Temporary Injunctions.

495. An injunction directed to a Corporation or public Company is binding not only on the Corporation or Company itself, but also on all members and officers of the Corporation or Company whose personal action it seeks to restrain.

CHAPTER XXXVII.—REFERENCE TO ARBITRATION.

506. If all the parties to a suit desire that any matter in difference between them in the suit be referred to arbitration, they may, at any time before judgment is pronounced, apply, in person or by their respective pleaders specially authorized in writing in this behalf, to the Court for an order of reference.

Every such application shall be in writing and shall state the particular matter sought to be referred.

507. The arbitrator shall be nominated by the parties in such manner as may be agreed upon between them.

If the parties cannot agree with respect to such nomination, or if the person whom they nominate refuses to accept the arbitration, and the parties desire that the nomination shall be made by the Court ; the Court shall nominate the arbitrator.

Order of
reference.

508. The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the delivery of the award, and specify such time in the order.

When once a matter is referred to arbitration, the Court shall not deal with it in the same suit, except as hereinafter provided.

When reference
is to two or
more, order to
provide for
difference of
opinion.

509. If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators,

(a) by the appointment of an umpire, or

(b) by declaring that the decision shall be with the majority, if the major part of the arbitrators agree, or

(c) by empowering the arbitrators to appoint an umpire, or

(d) otherwise, as may be agreed between the parties; or, if they cannot agree, as the Court determines.

If an umpire is appointed, the Court shall fix such time as it thinks reasonable for the delivery of his award in case he is required to act.

Death,
incapacity, &c.,
of arbitrators
or umpire.

510. If the arbitrator, or, where there are more arbitrators than one, any of the arbitrators, or the umpire, dies, or refuses, or neglects or becomes incapable to act, or leaves British India under circumstances shewing that he will probably not return at an early date, the Court may in its discretion either appoint a new arbitrator or umpire in the place of the person so dying, or refusing, or neglecting, or becoming incapable to act, or leaving British India, or make an order superseding the arbitration, and in such case shall proceed with the suit.

Appointment of
umpire by
Court.

511. Where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so, any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if, within seven days after such notice has been served, or such further time as the Court may in each case allow, no umpire be appointed, the Court, upon the application of the party who has served such notice as aforesaid, may appoint an umpire.

Powers of
arbitrator or
umpire
appointed under
sections 509,
510, 511.
Summoning
witnesses.

512. Every arbitrator or umpire appointed under section 509, section 510 or section 511 shall have the like powers as if his name had been inserted in the order of reference.

Punishment for
default, &c.

513. The Court shall issue the same processes to the parties and witnesses whom the arbitrators or umpire desire or desires to examine, as the Court may issue in suits tried before it.

Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

Extension of
time for making
award.

514. If, from the want of the necessary evidence or information, or from any other cause, the arbitrators cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either grant a further time, and from time to time enlarge the period for the delivery of the award, or make an order superseding the arbitration, and in such case shall proceed with the suit.

Supersession of
arbitration.

515. When an umpire has been appointed, he may enter on the reference in the place of the arbitrators.

When umpire
may arbitrate
in lieu of
arbitrators.

(a) if they have allowed the appointed time to expire without making an award, or

(b) when they have delivered to the Court or to the umpire a notice in writing, stating that they cannot agree.

Award to be
signed and
filed.

516. When an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in Court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

Arbitrators or
umpire may
state special
case.

517. Upon any reference to arbitration, the arbitrators or umpire, at the request of the Court, the arbitrators or umpire, may state a special case for the opinion of the Court, the arbitrators or umpire, may state the award as to the special case for the opinion of the Court.

of the Court; and the Court shall deliver its opinion thereon; and such opinion shall be added to and form part of the award.

518. The Court may, by order, modify or correct an award,

(a) Where it appears that a part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part, and does not affect the decision on the matter referred, or

Court may, on application, modify or correct award in certain cases.

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

519. The Court may also make such order as it thinks fit respecting the costs of the arbitration, if any question arise respecting such costs and the award contain no sufficient provision concerning them.

Order as to costs of arbitration.

520. The Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrators or umpire, upon such terms as it thinks fit,

When award or matter referred to arbitration may be remitted.

(a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration;

(b) where the award is so indefinite as to be incapable of execution;

(c) where an objection to the legality of the award is apparent upon the face of it.

521. An award remitted under section 520 becomes void on the refusal of the arbitrators or umpire to reconsider it. But no award shall be set aside, except on one of the following grounds (namely)—

Grounds for setting aside award.

(a) corruption or misconduct of the arbitrator or umpire;

(b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;

(c) the award having been made after the issue of an order by the Court superseding the arbitration and restoring the suit;

and no award shall be valid unless made within the period allowed by the Court.

522. If the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application has been made to set aside the award, or if the Court has refused such application,

Judgment to be according to award.

the Court shall, after the time for making such application has expired, proceed to give judgment according to the award,

or, if the award has been submitted to it in the form of a special case, according to its own opinion on such case.

Upon the judgment so given a decree shall follow, and shall be enforced in manner provided in this Code for the execution of decrees. No appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

Decree to follow.

523. When any persons agree in writing that any difference between them shall be referred to the arbitration of any person named in the agreement or to be appointed by any Court having jurisdiction in the matter to which the agreement relates, the parties thereto, or any of them, may apply that the agreement be filed in Court.

Agreement to refer to arbitration may be filed in Court.

The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application have been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

Application to be numbered and registered.

On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

Notice to show cause against filing.

If no sufficient cause be shown, the Court may cause the agreement to be filed, and shall make an order of reference thereon, and may also name the arbitrator when he is not named therein and the parties agree as to the nomination.

Provisions of chapter applicable to proceedings under order of reference.

Filing award in matter referred to arbitration without intervention of Court.

Application to be numbered and registered.

Notice to parties to arbitration.

Filing and enforcement of such award.

524. The foregoing provisions of this chapter, so far as they are consistent with any agreement so filed, shall be applicable to all proceedings under an order of reference made by the Court under section 523, and to the award of arbitration and to the enforcement of the decree founded thereupon.

525. When any matter has been referred to arbitration without the intervention of a Court of Justice, and an award has been made thereon, any person interested in the award may apply to the Court of the lowest grade having jurisdiction over the matter to which the award relates, that the award be filed in Court.

The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

The Court shall direct notice to be given to the parties to the arbitration other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

526. If no ground such as is mentioned or referred to in section 520 or section 521, be shewn against the award, the Court shall order it to be filed, and such award shall then take effect as an award made under the provisions of this chapter.

CHAPTER XXXVIII.—OF PROCEEDINGS ON AGREEMENT OF PARTIES.

Power to state case for Court's opinion.

527. Parties claiming to be interested in the decision of any question of fact or law, may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court and providing that, upon the finding of the Court with respect to such question,

(a) a sum of money fixed by the parties or to be determined by the Court, shall be paid by one of the parties to the other of them; or

(b) some property, moveable, or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

Every case stated under this section shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the question raised thereby.

When value of subject-matter must be stated.

528. If the agreement is for the delivery of any property, or for the doing, or the refraining from doing any particular act, the estimated value of the property to be delivered, or to which the act specified has reference shall be stated in the agreement.

Agreement to be filed and numbered as suit.

529. The agreement, if framed in accordance with the rules herein-before contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or others of them as defendant or defendants; and notice shall be given to all the parties to the agreement other than the party or parties by whom it was presented.

Parties to be subject to Court's jurisdiction.

530. When the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by the statements contained therein.

Hearing and disposal of case.

531. The case shall be set down for hearing as a suit instituted under Chapter V. the provisions of which shall apply to such suit so far as the same are applicable.

If the Court is satisfied, after an examination of the parties, or after taking such evidence as it thinks fit,

(a) that the agreement was duly executed by them, and

(b) that they have a *bonâ fide* interest in the question stated therein, and

(c) that the same is fit to be decided, it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so given a decree shall follow and shall be enforced in the manner provided in this Code for the execution of decrees.

CHAPTER XLI.—OF APPEALS FROM ORIGINAL DECREES.

540. Unless when otherwise expressly provided by this Code or by any other law for the time being in force, an appeal shall lie from the decrees, or from any part of the decrees, of the Courts exercising original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts.

Appeal to lie from all original decrees except when expressly prohibited.

541. The appeal shall be made in the form of a memorandum in writing presented by the appellant, and shall be accompanied by a copy of the decree appealed against and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

Form of appeal. What to accompany memorandum.

Such memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed against, without any argument or narrative; and such grounds shall be numbered consecutively.

Contents of memorandum.

542. The appellant shall not, without the leave of the Court, urge or be heard in support of any other ground of objection, but the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant :

Appellant confined to grounds set out.

Provided that the Court shall not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of contesting the case on that ground.

543. If the memorandum of appeal be not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

Rejection or amendment of memorandum.

When the Court rejects under this section any memorandum, it shall record the reasons for such rejection.

When a memorandum of appeal is amended under this section, the Judge, or such officer as he appoints in this behalf, shall attest the amendment by his signature.

544. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed against proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal against the whole decree, and thereupon the Appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants, as the case may be.

One of several plaintiffs or defendants may obtain reversal of whole decree if it proceed on ground common to all.

Of staying and executing Decrees under Appeal.

545. Execution of a decree shall not be stayed by reason only of an appeal having been preferred against the decree; but the Appellate Court may for sufficient cause order the execution to be stayed :

Execution of decree not stayed solely by reason of appeal.

If an application be made for stay of execution of an appealable decree before the expiry of the time allowed for appealing therefrom, the Court which passed the decree may for sufficient cause order the execution to be stayed :

Stay of execution of appealable decree before time for appealing has expired.

Provided that no order shall be made under this section unless the Court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

Security in case of order for execution of decree appealed against.

546. If an order is made for the execution of a decree against which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shewn by the appellant, require security to be given for the restitution of any property which may be taken in execution of the decree, or for the payment of the value of such property, and for the due performance of the decree or order of the Appellate Court.

or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

And when an order has been passed for the sale of immoveable property in execution of a decree for money, and an appeal is pending against such decree, the sale shall on the application of the judgment-debtor be stayed until the appeal is disposed of, on such terms as to giving security or otherwise as the Court which passed the decree thinks fit.

No such security to be required from Government or public officers.

547. No such security as is mentioned in sections 545 and 546, shall be required from the Secretary of State for India in Council, or (when Government has undertaken the defence of the suit) from any public officer sued in respect of an act alleged to be done by him in his official capacity.

Of Procedure in Appeal from Decrees.

Registry of memorandum of appeal.

548. When a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Register of Appeal.

Such book shall be called the Register of Appeals.

Appellate Court may require appellant to give security for costs.

549. The Appellate Court may at its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both :

When appellant resides out of British India.

Provided that the Court shall demand such security in all cases in which the appellant is residing out of British India, and is not possessed of any sufficient immoveable property within British India independent of the property (if any) to which the appeal relates.

If such security be not furnished within such time as the Court orders, the Court shall reject the appeal.

Appellate Court to give notice to Court whose decree appealed against.

550. When the memorandum of appeal is registered, the Appellate Court shall send notice of the appeal to the Court against whose decree the appeal is made.

Transmission of papers to Appellate Court.

If the appeal be from a Court the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

Copies of exhibits in Court whose decree is appealed against.

Either party may apply in writing to the Court against whose decree the appeal is made, specifying any of such papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of the applicant, and shall be deposited accordingly.

Power to confirm decision of lower Court without sending it notice.

551. The Appellate Court may, if it thinks fit, after fixing a time for hearing the appellant or his pleader, and hearing him accordingly if he appears at such time, confirm the decision of the Court against whose decree the appeal is made, without sending notice of the appeal to such Court and without serving notice on the respondent or his pleader; but in such case the confirmation shall be notified to the same Court.

Day for hearing appeal.

552. The Appellate Court, unless where it confirms, under section 551, the decision of the lower Court, shall fix a day for hearing the appeal.

Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

553. Notice of the day so fixed shall be stuck up in the Appellate court-house, and a like notice shall be sent by the Appellate Court to the Court against whose decree the appeal is made, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided in Chapter VI. for the service on a defendant of summons to appear and answer; and all rules applicable to such summons and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Publication and service of notice of day for hearing appeal.

Instead of sending the notice to the Court against whose decree the appeal is made, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the rules above referred to.

Appellate Court may itself cause notice to be served.

554. The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*.

Contents of notice.

Procedure on Hearing.

555. On the day so fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

Right to begin.

556. If on the day so fixed, or any other day to which the hearing may be adjourned, the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default.

Dismissal of appeal for appellant's default.

If the appellant attends and the respondent does not attend, the appeal shall be heard *ex parte* in his absence.

Hearing appeal *ex parte*.

557. If on the day so fixed, or any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed by the Court, the sum required to defray the cost of issuing the notice, the Court may order that the appeal be dismissed:

Dismissal of appeal where notice not served in consequence of appellant's failure to deposit cost.

Provided that no such order shall be passed, although the notice has not been served upon the respondent, if on the day fixed for hearing the appeal the respondent appears in person or by a pleader, or by a duly authorized agent.

Proviso.

558. If an appeal be dismissed under section 556 or section 557, the appellant may apply to the Appellate Court for the re-admission of the appeal; and if it be proved that he was prevented by any sufficient cause from attending when the appeal was called on for hearing or from depositing the sum so required, the Court may re-admit the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

Re-admission of appeal dismissed for default.

559. If it appear to the Court at the hearing that any person who was a party to the suit in the Court against whose decree the appeal is made, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court, and direct that such person be made a respondent.

Power to adjourn hearing and direct persons appearing interested to be made respondents.

560. When an appeal is heard *ex parte* in the absence of the respondent, and judgment is given against him, he may apply to the Appellate Court to re-hear the appeal; and if he satisfies the Court that the notice was not duly served, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing, the Court may re-hear the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

Re-hearing on application of respondent against whom *ex parte* decree made.

561. Any respondent, though he may not have appealed against any part of the decree, may upon the hearing not only support the decree on any of the grounds decided against him in the Court below, but take any objection to the decree which he could have taken by way of appeal, provided he has filed a notice of such objection not less than seven days before the date fixed for the hearing of the appeal.

Upon hearing respondent may object to decree as if he had preferred separate appeal.

Form of notice, and provisions applicable thereto.

Such objection shall be in the form of a memorandum, and the provisions of section 541, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

Remand of case by Appellate Court.

562. If the Court against whose decree the appeal is made has disposed of the suit upon a preliminary point so as to exclude any evidence of fact which appears to the Appellate Court essential to the determination of the rights of the parties, and the decree upon such preliminary point is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, together with a copy of the order in appeal, to the Court against whose decree the appeal is made, with directions to re-admit the suit under its original number in the register and proceed to investigate the suit on the merits.

The Appellate Court may, if it thinks fit, direct what issue or issues shall be tried in any case so remanded.

When further evidence barred.

563. When a case is remanded with directions to take any evidence so excluded, the Court to which the case is remanded shall not take any other evidence in the case, except evidence tendered to contradict the evidence so taken.

Limit to remand.

564. The Appellate Court shall not remand a case for a second decision, except as proved in section 562.

When evidence on record sufficient, Appellate Court shall determine case finally.

565. When the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court shall, after re-settling the issues, if necessary, finally determine these, notwithstanding that the judgment of the Court against whose decree the appeal is made has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

When Appellate Court may frame issues and refer them for trial to Court whose decree is appealed against.

566. If the Court against whose decree the appeal is made has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, and the evidence upon the record is not sufficient to enable the Appellate Court to determine such issue or question, the Appellate Court may frame issues for trial, and may refer the same for trial to the Court against whose decree the appeal is made, and in such case shall direct such Court to take the additional evidence required, and such Court shall proceed to try such issues, and shall return to the Appellate Court its finding thereon, together with the evidence.

Finding and evidence to be put on record. Objections to finding.

567. Such finding and evidence shall become part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to the finding.

Determination of appeal.

After the expiration of the period fixed for presenting such memorandum, the Appellate Court shall proceed to determine the appeal.

Production of additional evidence in Appellate Court.

568. The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if

(a) the Court against whose decree the appeal is made refuses to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence to be produced, or document to be received, or witness to be examined.

Whenever additional evidence is admitted by an Appellate Court, the Court shall record on its proceedings the reason for such admission.

Mode of taking additional evidence.

569. Whenever additional evidence is allowed to be received, the Appellate Court may either take such evidence, or direct the Court against whose decree the appeal is made, or any other subordinate Court to take such evidence and to send it when taken to the Appellate Court.

Points to be defined and recorded.

570. In all cases where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Of the Judgment in Appeal.

571. The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court against whose decree the appeal is made, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day, of which notice shall be given to the parties or their pleaders.

Judgment when
and where
pronounced.

572. The judgment shall be written in English; provided that if English is not the mother-tongue of the Judge, and he is not able to write an intelligible judgment in English, the judgment shall be written in his mother-tongue or in the language of the Court.

Language of
judgment.

573. When the language in which the judgment is written is not the language of the Court, the judgment shall, if any party so require, be translated into such language, and the translation, after it has been ascertained to be correct, shall be signed by the Judge or such officer as he appoints in this behalf.

Translation of
judgment.

574. The judgment of the Appellate Court shall state—

Contents of
judgment.

(a) the points for determination;

(b) the decision thereupon;

(c) the reasons for the decision; and

(d) when the decree appealed against is reversed or varied, the relief to which the appellant is entitled.

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

Date and
signature.

575. When the appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

Decision when
appeal is heard
by two or more
Judges.

If there be no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed:

Provided that if the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, the appeal may be referred to one or more of the other Judges of the same Court, and shall be decided according to the opinion of the majority (if any) of all the Judges who have heard the appeal, including those who first heard it.

When there is no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed.

The High Court may, from time to time, make rules consistent with this Code to regulate references under this section.

576. When the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

Dissent to be
recorded.

577. The judgment may be for confirming, varying or reversing the decree against which the appeal is made or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be passed in appeal, the Appellate Court may pass a decree or order accordingly.

What judgment
may direct.

578. No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal, on account of any error, defect or irregularity, whether in the decision or in any order passed in the suit, or otherwise, not affecting the merits of the case or the jurisdiction of the Court.

No decree to be
reversed or
modified for
error or
irregularity not
affecting merits
or jurisdiction.

Of the Decree in Appeal.

579. The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

Date and
contents of
decree.

The decree shall contain the number of the appeal, and the memorandum of appeal, including the names and description of the appellant and respondent, and shall specify clearly the relief granted or other determination of the appeal.

The decree shall also state the amount of costs incurred in the appeal, and by what parties and in what proportions such costs and the costs in the suit are to be paid.

The decree shall be signed and dated by the Judge or Judges who passed it:

Judge dissenting from judgment need not sign decree.

Provided that where there are more Judges than one, if there be a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

Copies of judgment and decree to be furnished to parties.

580. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Court and at their expense.

Certified copy of decree to be sent to Court whose decree is appealed against.

581. A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed against, and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

Appellate Court to have same powers as Courts of original jurisdiction.

582. The Appellate Court shall have, in appeals under this chapter, the same powers, and shall perform as newly as may be the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under Chapter V.; and in Chapter XXI, so far as may be, the words "plaintiff," "defendant" and "suit" shall be held to include an appellant, a respondent and an appeal, respectively, in proceedings arising out of the death, marriage or insolvency of parties to an appeal.

The provisions hereinbefore contained shall apply to appeals under this chapter so far as such provisions are applicable.

Execution of decree of Appellate Court.

593. When a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal under this chapter desires to obtain execution of the same, he shall apply to the Court which passed the decree against which the appeal was preferred; and such Court shall proceed to execute the decree passed in appeal, according to the rules hereinbefore prescribed for the execution of decrees in suits.

CHAPTER XLII.—OF APPEALS FROM APPELLATE DECREES.

Second appeals to High Court.

584. Unless when otherwise provided by this Code or by any other law, from all decrees passed in appeal by any Court subordinate to a High Court, an appeal shall lie to the High Court on any of the following grounds (namely)—

Grounds of second appeal.

(a) the decision being contrary to some specified law or usage having the force of law.

(b) the decision having failed to determine some material issue of law or usage having the force of law;

(c) a substantial error or defect in the procedure as prescribed by this Code or any other law, which may possibly have produced error or defect in the decision of the case upon the merits.

CHAPTER XLVII.—OF REVIEW OF JUDGMENT.

Application for review of judgment.

623. Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is hereby allowed, but from which no appeal has been preferred;

(b) by a decree or order from which no appeal is hereby allowed; or

(c) by a judgment on a reference from a Court of Small Causes, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him,

may apply for a review of judgment to the Court which passed the decree or made the order, or to the Court, if any, to which the business of the former Court has been transferred.

A party who is not appealing from a decree may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except when the ground of such appeal is common to the applicant and the appellant, or when, being a respondent, he can present to the Appellate Court the case on which he applies for the review.

624. Except upon the ground of the discovery of such new and important matter or evidence as aforesaid, or of some clerical error apparent on the face of the decree, no application for a review of judgment, other than that of a High Court, shall be made to any Judge other than the Judge who delivered it.

To whom applications for review may be made.

625. The rules hereinbefore contained as to the form of making appeals shall apply, *mutatis mutandis*, to applications for review.

Form of applications for review.

626. If it appear to the Court that there is not sufficient ground for a review, it shall reject the application.

Application when rejected.

If the Court be of opinion that the application for the review should be granted, it shall grant the same, and the Judge shall record with his own hand his reasons for such opinion :

Application when granted.

Provided that—

(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree, a review of which is applied for : and

Proviso.

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him, when the decree or order was passed, without strict proof of such allegation.

627. If the Judge or Judges, or any one of the Judges, who passed the decree or order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause, for a period of six months next after the application, from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

Application for review in Court consisting of two or more Judges.

628. If the application for a review be heard by more than one Judge and the Court be equally divided, the application shall be rejected.

Application when rejected.

If there be a majority the decision shall be according to the opinion of the majority.

629. An order of the Court for rejecting the application shall be final ; but whenever such application is admitted, the admission may be objected to on the ground that it was

Order of rejection final. Objections to admission.

(a) in contravention of the provisions of section 624,

(b) in contravention of the provisions of section 626, or

(c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be made at once by an appeal against the order granting the application, or may be taken in any appeal against the final decree or order made in the suit.

Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, if it be proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court may order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

No order shall be made under this section unless the applicant has served the opposite party with notice in writing of the latter application.

No application to review an order passed on review or on an application for a review shall be entertained.

630. When an application for a review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

Registry of application granted, and order for re-hearing.

No. 140.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF
SHARES IN A PUBLIC COMPANY, &C.

Section 268 of the Code of Civil Procedure.

(Title.)

To

Defendant, and to
Company.

, Manager of

has failed

WHEREAS

to satisfy a decree passed against

on the day of 18 , in Civil Suit, No.
of 18 in favour of for Rs.it is ordered that you, the defendant, be, and you are hereby prohibited
and restrained, until the further order of this Court, from making any
transfer of shares in the aforesaid Company
namely, or from receiving

payment of any dividends thereof; and you

, the Manager of the said Company, are hereby prohibited
and restrained from permitting any such transfer or making any such
payment.GIVEN under my hand and the seal of the Court, this day of
18 .

L. S.

Judge.

No. 148.

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD
IN EXECUTION.

Section 301 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No.

AT

of 18 .

A. B. of

against

C. D. of

To

and Manager of Company.

WHEREAS has become the purchaser at a public sale in
execution of the decree, in the above suit of certain shares in the above
Company, that is to say, of

standing in the name of you

, it is ordered that you be, and you
are hereby prohibited from making any transfer of the said shares to any
person except the said the purchaser
aforesaid, or from receiving any dividends thereon; and you, Manager of the
said Company, from permitting any such transfer or making any such
payment to any person except the said , the purchaser
aforesaid.

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

No. 165.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER WHERE THE PROPERTY CONSISTS OF
SHARES IN A PUBLIC COMPANY, &C.

Section 486 of the Code of Civil Procedure.

Civil Suit, No. of 18 .

IN THE COURT OF

AT

A. B. of

against

C. D. of

To Defendant and to
Manager of Company.
It is ordered that , the defendant, be, and
hereby, prohibited and restrained until the further order of the Court,
from making any transfer of shares being
in the aforesaid Company, or from receiving
payment of any dividends thereof, and you
Manager of the said Company, are hereby prohibited and restrained
from permitting any such transfer or making any such payment.
GIVEN under my hand and the seal of the Court, this day
of 18 .

L. S.

Judge.

INDIAN INSOLVENT ACT, 11 AND 12 VIC. C. 21.

7. And be it enacted, that upon the filing of any such petition as is aforesaid, it shall be lawful for the said Court, and the said Court is hereby authorized and required to order, that all the real and personal estate and effects of such petitioner, whether within the territories within the limits of the Charter of the *East India Company* or without, except the wearing apparel, bedding, and other such necessities of such petitioner and his family, and the working tools and implements of such petitioner and his family, not exceeding in the whole the value of Company's Rupees three hundred, for each petitioner with his family, and all debts due to him, and all the future estate, right, title, interest, and trust of the said petitioner in or to any real or personal estate or effects within or without the said territories, which such petitioner may purchase, or which may revert, descend, be devised or bequeathed, or come to him, and all debts growing due to him before the Court shall have made its order in the nature of a certificate as hereinafter mentioned, do vest in the Official Assignee for the time being of the said Court, and that all books, papers, deeds, and writings in any way relating to such petitioner's estate and effects in his possession, or under his custody or control, shall be deposited with such Assignee, and such order shall be entered on record in the said Court, and such notice thereof shall be published as the said Court shall direct; and such order, when so made, shall by virtue of this Act relate back to, and take effect from, the filing of the said petition, and shall instantly, and without any conveyance or assignment, vest all the real and personal estate, effects and debts as aforesaid in the said Official Assignee, who shall have full powers for the recovery thereof, and shall hold and stand possessed of the same for the purposes and in

Upon filing
petition the real
and personal
estate of
petitioner to
vest in
Official As-
signee as Court
shall direct.

manner hereinafter mentioned: Provided always, that in case, after the making of any such vesting order, the petition of any such petitioner shall be dismissed by the said Court, such vesting order, made in pursuance of such petition shall from and after such dismissal be null and void to all intents and purposes: Provided also that in case any such vesting order as aforesaid shall become null and void by the dismissal of such petition, all acts theretofore done by any Assignee or other person acting under his authority according to the provisions of this Act, shall be good and valid, and no action or suit shall be commenced against any such Assignee, nor against any person duly acting under his authority, except to recover any property of such petitioner, detained after an order made by the said Court, for the delivery thereof, and demand made thereupon; and until the appointment of an Official Assignee as hereinafter is directed, the Common Assignee of the Court shall stand and be in the place of the Official Assignee, and this present clause shall apply and have effect accordingly.

In case, after making vesting order, petition be dismissed, the same to be null and void; but all acts done by any Assignee under this Act to be held valid.

Power of Assignees.

21. And be it enacted, that every such Assignee as aforesaid shall with all convenient speed take possession, by himself, or by means of messengers of the Court, or by other fit and proper persons, of all the real and personal estate and effects of the Insolvent of which immediate possession may be obtained, and shall use his best endeavours to seize, obtain, recover, and reduce into possession, as quickly as possible, the rest of such estate, effects, and all debts, claims, and choses in action, which, by virtue of such appointment under this Act, and of the vesting order or adjudication aforesaid, he shall have been empowered to obtain, recover, and get in.

Government stock, &c., standing in name of Insolvent to be transferred to Assignee.

25. And be it enacted, that if any such Insolvent as aforesaid shall at any time before he shall have obtained his discharge in the nature of a certificate hereinafter mentioned be entitled to or possessed of, in his own right, any Government stock, funds, or annuities, or any of the stocks or shares in any public Company, either in *England, Scotland, or Ireland*, or the territories under the Government of the *East India Company*, it shall be lawful for the said Court, upon the application of any Assignee or any creditor of such Insolvent whose debt or demand against such Insolvency shall have been admitted or established in the matter of the said insolvency, whenever it shall deem fit so to do, to order all persons whose act or consent is thereto necessary to transfer the same into the name or names of such Assignee or Assignees as aforesaid; and all such persons whose act or consent is so necessary as aforesaid are hereby indemnified for all things done or permitted pursuant to such order; Provided always, that in all transfers into the name or names of any such Assignee or Assignees, the transferee or transferees shall be described as Assignee or Assignees of the estate and effects of the Insolvent, and no dividend shall be paid to, nor any future transfer made by, any person of any such stock, funds, annuities, or shares, except under a power of attorney, in the usual form required for the receipt of dividends upon or transfer of such stock, funds, annuities, and shares respectively, duly executed by such Assignee or Assignees, and attested by two credible witnesses, one of whom shall be an officer of such Court for the Relief of Insolvent Debtors, and to which attestation the seal of such Court shall be affixed.

Persons holding property of Insolvent except stocks, &c., or indebted to him, to transfer the same, and make payment of debts to the Assignee.

26. And be it enacted, that in case any person shall, after any such Insolvent shall have petitioned for his discharge under this Act, or have been adjudged to have committed an act of insolvency, and before the said Insolvent shall have obtained his discharge in the nature of a certificate as hereinafter mentioned, be possessed of or have under his power or control any property whatsoever of such Insolvent, other than any such Government stock, funds, or annuities as aforesaid, or other than any of the stock or shares in any public Company either in *England, Scotland, or Ireland*, or within the limits aforesaid, or to which such Insolvent may be in any way entitled, either under any trust, express or implied, or otherwise held for his use and benefit, or in case any such

person shall be at any such period indebted to such Insolvent, it shall be lawful for the said Court, upon the application of any Assignee or any creditor of such Insolvent whose debt or demand shall have been admitted or established in the matter of the said insolvency, to cause notice to be given to such person, directing him to hold and retain the said property till the said Court shall make further order concerning the same; and thereupon it shall be lawful for the said Court further to order such person to deliver over such property, and to pay such debts as aforesaid, or any part thereof, to the Assignee or Assignees of the estate and effects of such Insolvent, for the general benefit of the creditors of such Insolvent; and such delivery and payment shall be made accordingly in obedience to such order, and such person shall, by such payment and delivery, so made in pursuance of such order of the said Court, be discharged in respect of such property and debts against all persons whatsoever to all intents and purposes.

30. And be it enacted, that all powers vested in any such Insolvent, which he might lawfully execute for his benefit, shall be and are hereby vested in the Assignee or Assignees of the real and personal estate of such Insolvent or Insolvents by virtue of this Act, to be executed by his Assignee or Assignees for the benefit of his creditors.

All powers vested in Insolvent to be vested in the Assignee for the benefit of the creditors.

31. And be it enacted, that the Assignee or Assignees shall, with all convenient speed, make sale of the property and effects of the Insolvent: Provided nevertheless, that the said Court shall have full power and authority, upon the application of any Insolvent, or any creditor or mortgagee of such Insolvent, to delay or postpone the sale of any property, and to make such other order respecting the same as to such Court shall seem meet.

Assignee to make sale of Insolvent's estate.

39. And be it enacted, that when there has been mutual credit given to the Insolvent and any other person or persons, one debt or demand may be set against the other.

When mutual credit given, one debt may be set against the other.

40. And be it enacted, that all such debts, dues, and claims as might be proved under a fiat of bankruptcy bearing even date with the Insolvent's petition or the adjudication (as the case may be), according to the provisions of the said Act passed in the sixth year of the reign of His late Majesty King George the fourth, intituled *an Act to amend the law relating to Bankrupts*, or any other Statute or Statutes now in force or hereafter to be passed relating to bankrupts, may also be proved as is hereinbefore mentioned, in the same manner and subject to the like deductions, conditions, and provisions as in the said Statutes are or may be set forth and prescribed.

All debts, &c., proveable under fiat in bankruptcy, pursuant to Bankrupt Laws may be proved under insolvency.

47. And be it enacted, that upon application to the Court for that purpose, it shall be lawful for the Court to declare that the Insolvent is entitled to his personal discharge under this Act, and to order the same accordingly, which order of discharge shall have the effect of protecting his person from arrest in respect of all demands inserted in his schedule or established in the same Court; and if such Insolvent be in custody, it shall be lawful for the Court to order his immediate discharge from custody accordingly, or to dismiss or give leave to amend the petition aforesaid, or to order the Insolvent to amend his schedule, or to adjourn the hearing until a future day, or to make a reference to the examiner or other officer of the said Court to make inquiry into any matter of account, or into the truth of the schedule or schedules, and to report thereon to the Court; and it shall also be lawful for the Court to remand the Insolvent to prison, if a prisoner, until a further hearing, or until a further time to be named in such order, or to commit the Insolvent to custody for any debt or demand if he shall not be in custody at the time of the hearing, and to cancel or renew any such order as is hereinbefore mentioned which may have been given for the purpose of affording interim protection to the Insolvent from arrest, and to order and direct that the Assignee shall make some reasonable allowance for maintenance of the Insolvent until final order, the amount of which shall be

Court may, by order of discharge, protect Insolvent or discharge from custody, or dismiss, &c., petition, or order to amend schedule or adjourn the hearing.

Court may remand Insolvent to prison, &c., and order an allowance for maintenance

fixed by the Court, and shall not exceed five Company's rupees *per week*; and the Court by which any order of discharge shall be made upon any such hearing as is hereinbefore mentioned shall, by such order, direct that the Assigner shall give such notice of such order, as to the Court shall seem fit and convenient.

Discharge to extend to any sums payable by Insolvent by way of annuity at any future time, &c.

Persons who would be creditors of moneys were presently due entitled to benefit of privileges under this Act.

Discharge to extend to costs incurred before insolvency.

Penalty on Insolvent fraudulently concealing his effects or destroying or falsifying books, or giving undue preference or contracting debts by breach of trust, &c.

Where estate pays one-third of Insolvent's debts, or where creditors to that amount consent, Court may grant an order *nisi* for final discharge of Insolvent, appoint a time for hearing, and direct notices to be given.

48. And be it enacted, that the discharge of any such Insolvent as aforesaid shall and may extend to any sum or sums of money, which shall be payable, by way of annuity or otherwise, at any future time or times, by virtue of any bond, covenant, or other security whatsoever, and to any sum or sums of money payable at a certain time, which time shall not have arrived at the time of the act of insolvency or petition of such Insolvent; and that every person and persons who would be a creditor of such Insolvent for such sum of money if the same were presently due, shall be admissible as a creditor of such Insolvent, for the value of such sum of money so payable as aforesaid, which value the said Court shall, upon application at any time made in that behalf, ascertain; and such creditor shall be entitled in respect of such value to the benefit of all the provisions made for creditors by this Act, without prejudice, nevertheless, to the respective securities of such creditor, excepting as respects such Insolvent's discharge under this Act; and the discharge by virtue of this Act as to any debt or demand of any creditor of the Insolvent shall be deemed to extend also to all costs incurred by such creditor before the insolvency in any action or suit for the recovery of the same, and to any process of contempt for enforcing the same, and to all costs which the Insolvent would be liable to pay in clearing such contempt; and that all persons as to whose demands for any such costs as aforesaid the discharge of the Insolvent is so to extend, shall be deemed creditors of the Insolvent in respect thereof, and entitled in respect thereof to the benefit of all the provisions made for creditors by this Act, subject nevertheless to ascertaining the amount of such demands by taxation or otherwise.

50. And be it enacted, that in case it shall appear to any Court for the Relief of Insolvent Debtors that any such Insolvent has fraudulently, with the intent to conceal the state of his affairs, or to defeat the objects of this Act, destroyed or otherwise wilfully prevented or purposely withheld the production of any book, paper, or writing relating to such of his affairs as are subject to investigation under this Act, or kept or caused to be kept false books, or made false entries in, or withheld entries from, or wilfully altered or falsified any such book, paper, or writing, or that such Insolvent has fraudulently, with intent of diminishing the sum to be divided among his creditors or of giving an undue preference to any of the said creditors, discharged or concealed any debt due to or from the said Insolvent, or made away with, charged, mortgaged, or concealed any part of his property, of what kind soever, such Court shall have power to adjudge that the Insolvent shall be imprisoned for a period or periods not exceeding two years in the whole, as such Court shall direct, and to declare him entitled to his discharge as aforesaid at the expiration of the term of imprisonment to which he shall be sentenced, and by warrant under the seal of the Court to order him to be arrested and committed to prison, and there to be detained accordingly.

59. And be it enacted, that whenever it shall appear that the estate of any Insolvent, which has come to the hands of his Assignee, has sufficed to pay one-third of his debts admitted or established in the matter of the said insolvency, or that a majority in number and value of the creditors whose debts are admitted by the schedule, or established by proof, have consented to such application, it shall be lawful for the said Court at any time after the hearing of his petition, upon the application of the Insolvent by petition, which may be in the form contained in the Schedule (E) to this Act annexed, with such variations as the case may require, to make an order *nisi* for his discharge in the nature of a certificate, and such order shall specify the creditors whose demands are

thereby sought to be discharged and shall appoint a time for the further hearing of the said petition, and shall direct such notice to be given of such order in the meantime as it shall think fit, and in case any of the creditors against whom such discharge shall be sought shall appear to the Court to be resident without the limits of the Charter of the *East India* Company, to cause notice of such order or of so much thereof as may appear necessary, to be inserted in the Gazette of the Presidency; and the Chief Secretary of the Government of the Presidency shall thereafter, without delay, transmit copies of such Gazettes containing such notice as aforesaid, by separate conveyances, to the Court of Directors of the *East India* Company, who shall, without delay, cause an extract from such Gazette to be inserted in the *London Gazette*; and upon the further hearing of such petition, it shall be lawful for the said Court to make such order absolute, or to dismiss such petition, or to adjourn the further hearing thereof, or to make such order therein as shall be just; and such discharge, unless order shall be made to the contrary, shall extend to and shall discharge the Insolvent personally, and also his after-acquired property, from the demands of all the creditors named in the said order *nisi*: Provided always, that such order shall not affect any creditors without the limits of the Charter of the said *East India* Company, unless notice of the said order *nisi* shall have been directed to be given in the Gazette in manner aforesaid, and a period of twelve calendar months shall have elapsed between the date of the said order *nisi* and the date of the said order to make the same absolute: Provided also, that such order shall not operate as a release or discharge of any person who was a partner with such Insolvent, or jointly bound or liable with him.

Such order not to affect any creditor without the limits of the Charter unless notice given, and not to operate as a release or discharge of a partner of Insolvent.

60. And be it enacted, that it shall be lawful for any insolvent debtor, being such trader as hereinbefore is mentioned, who shall have presented a petition under this Act, or as to whom an adjudication that he has committed an act of insolvency shall have been made under this Act, provided he shall have filed his schedule, to apply to the said Court by petition, which may be in the form contained in Schedule F to this Act annexed, with such variations as the case may require; and that it shall be lawful for the said Court, upon such petition, to make an order *nisi* for his discharge in the nature of a certificate, and to appoint a time for the further hearing of the said petition, and to direct such notices to be given of such order in the meantime as it shall think fit, and in case any of the creditors against whom such discharge shall be sought shall appear to the Court to be resident without the limits of the Charter of the *East India* Company, to cause notice of such order to be inserted in the Gazette of the Presidency; and the Chief Secretary of the Government of the Presidency shall thereafter without delay transmit copies of such Gazettes containing such notice as aforesaid, by separate conveyances, to the Court of Directors of the *East India* Company, who shall, without delay, cause an extract from such Gazette containing such notice to be inserted in the *London Gazette*; and upon the further hearing of such petition, it shall be lawful for the said Court to make such order absolute, or to dismiss such petition, or to adjourn the further hearing thereof, or to make such order therein as shall be just; and such discharge, unless such order shall be made to the contrary, shall extend to and shall discharge the Insolvent personally, and also his after-acquired property, from all demands which would be discharged by a certificate under the bankrupt laws, granted under a fiat bearing even date with the Insolvent's petition, or with the adjudication, as the case may be: Provided always, that such order shall not affect any creditor without the limits aforesaid, unless notice of such order *nisi* shall have been directed to be given in the *London Gazette* in manner aforesaid, and a period of twelve months shall have elapsed between the date of the said order *nisi* and the date of the said order to make the same absolute: Provided also, that such order shall not operate as a release or discharge of any person who was partner with such Insolvent, or jointly bound or liable with him.

Court may, upon application of insolvent trader, provided he has filed his schedule, make an order *nisi* for his discharge, appoint a time for hearing, and direct notices to be given.

Such order not to affect creditor without the limits of the Charter unless notice given, and not to operate as a release or discharge of partner of Insolvent.

Nothing in this Act to affect debts, penalties, &c., due to the Crown.

62. Provided always, and be it enacted, that no debt due to our Sovereign Lady the Queen, nor any fine, penalty, or forfeiture whatsoever, nor any recognizance whereby a debt is acknowledged to the Queen, nor any debt due on account of any fine, penalty, or forfeiture, or any estreat, shall be deemed or taken to be such a debt or debts as to entitle any person or persons to petition as is before-mentioned, nor shall any person be entitled to receive any dividend for the same under this Act, nor shall any such fines, penalties, forfeitures, recognizances, debts, or estreats be in any way discharged or affected by anything done under this Act, otherwise than they might and would have been discharged or affected if this Act had not been passed.

CRIMINAL PROCEDURE CODE, X. OF 1882.

District Magistrate.

10. In every District outside the Presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

Officers temporarily succeeding to vacancies in office of District Magistrate.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the District, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

Subordinate Magistrates.

12. The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second, or third class in any District outside the Presidency-towns; and the Local Government, or the District Magistrate, subject to the control of the Local Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

Local limits of their Jurisdiction.

Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such District.

Warrant for levy of fine.

386. Whenever an offender is sentenced to pay a fine, the Court passing the sentence may, in its discretion, issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned.

Effect of such warrant.

387. Such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the distress and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

Suspension of execution of sentence of imprisonment.

388. When an offender has been sentenced to fine only, and to imprisonment in default of payment of the fine, and the Court issues a warrant under section 386, it may suspend the execution of the sentence of imprisonment and may release the offender on his executing a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day not being more than fifteen days from the time of executing the bond; and in the event of the fine not having been realized the Court may direct the sentence of imprisonment to be carried into execution at once.

INDIAN SUCCESSION ACT X. OF 1865.

Exoneration of specific legatees' stock in a joint stock Company.

157. In the absence of any direction in the will, where there is a specific bequest of stock in a joint stock Company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the testator's estate and the legatee, be borne by such estate; but if any call or other payment shall, after the testator's death, become due in respect of such stock, the

same shall, as between the testator's estate and the legatee, be borne by the legatee if he accepts the bequest.

Illustrations.

(a) *A* bequeaths to *B* his shares in a certain railway. At *A*'s death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by *A*'s estate.

(b) *A* has agreed to take 50 shares in an intended joint stock Company, and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. *A* bequeaths these shares to *B*. The estate of *A* must make good the payments which were necessary to complete *A*'s title.

(c) *A* bequeaths to *B* his shares in a certain railway. *B* accepts the legacy. After *A*'s death, a call is made in respect of the shares. *B* must pay the call.

(d) *A* bequeaths to *B* his shares in a joint stock Company. *B* accepts the bequest. Afterwards the affairs of the Company are wound-up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(e) *A* is the owner of ten shares in a railway company. At a meeting held during his lifetime, a call is made of 3*l.* per share, payable by three instalments. *A* bequeaths his shares to *B*, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. *A*'s estate must pay the first instalment, and *B*, if he accepts the legacy, must pay the remaining instalments.

282. Save as aforesaid, no creditor is to have a right of priority over another, by reason that his debt is secured by an instrument under seal, or on any other account. But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

This section is incorporated as s. 104 in the Probate and Administration Act V. of 1881.

RELIGIOUS SOCIETIES' ACT I. OF 1880.

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE
9TH JANUARY 1880.

An Act to confer certain powers on Religious Societies.

Whereas it is expedient to simplify the manner in which certain bodies of persons associated for the purpose of maintaining religious worship may hold property acquired for such purpose, and to provide for the dissolution of such bodies and the adjustment of their affairs and for the decision of certain questions relating to such bodies: It is hereby enacted as follows:—

1. This Act may be called "The Religious Societies' Act, 1880."

It shall come into force at once; and

shall extend to the whole of British India;

but nothing herein contained shall apply to any Hindus, Muhammadans, or Buddhists, or to any persons whom the Governor General in Council may, from time to time, by notification in the *Gazette of India*, exclude from the operation of this Act.

2. When any body of persons associated for the purpose of maintaining religious worship has acquired, or hereafter shall acquire, any property,

and such property has been or hereafter shall be vested in trustees in trust for such body,

and it becomes necessary to appoint a new trustee in the place of or in addition to any such trustee or any trustee appointed in the manner hereinafter prescribed,

Short title.

Commencement.

Local extent.

Appointment of new trustee in cases not otherwise provided for.

and no manner of appointing such new trustee is prescribed by any instrument by which such property was so vested or by which the trusts on which it is held have been declared, or such new trustee cannot for any reason be appointed in the manner so prescribed,

such new trustee may be appointed in such manner as may be agreed upon by such body, or by a majority of not less than two-thirds of the members of such body actually present at the meeting at which the appointment is made.

Appointment under section 2 to be recorded in a memorandum under the hand of the chairman of the meeting.

3. Every appointment of new trustees under section 2 shall be made to appear by some memorandum under the hand of the chairman for the time being of the meeting at which such appointment is made.

Such memorandum shall be in the form set forth in the schedule hereto annexed, or as near thereto as circumstances allow, shall be executed and attested by two or more credible witnesses in the presence of such meeting, and shall be deemed to be a document of which the registration is required by the Indian Registration Act, 1877, section seven-teen.

Property to vest in new trustees without conveyance.

4. When any new trustees have been appointed, whether in the manner prescribed by any such instrument as aforesaid or in the manner hereinbefore provided, the property subject to the trust shall forthwith, notwithstanding anything contained in any such instrument, become vested, without any conveyance or other assurance, in such new trustees and the old continuing trustees jointly, or, if there are no old continuing trustees, in such new trustees wholly, upon the same trusts, and with and subject to the same powers and provisions, as it was vested in the old trustees.

Saving of existing modes of appointment and conveyance.

5. Nothing herein contained shall be deemed to invalidate any appointment of new trustees, or any conveyance of any property, which may hereafter be made as heretofore was by law required.

Provision for dissolution of societies and adjustment of their affairs.

6. Any number not less than three-fifths of the members of any such body as aforesaid may at a meeting convened for the purpose determine that such body shall be dissolved; and thereupon it shall be dissolved forthwith, or at the time then agreed upon; and all necessary steps shall be taken for the disposal and settlement of the property of such body, its claims and liabilities, according to the rules of such body applicable thereto, if any, and if not, then as such body at such meeting may determine:

Provided that, in the event of any dispute arising among the members of such body, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of such body is situate; and the Court shall make such order in the matter as it deems fit.

Upon dissolution no member to receive profit.

7. If upon the dissolution of any such body there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of such body or any of them, but shall be given to some other body of persons associated for the purpose of maintaining religious worship or some other religious or charitable purpose to be determined by the votes of not less than three-fifths of the members present at a meeting convened in this behalf, or in default thereof by such Court as last aforesaid.

Saving of certain provisions of instruments.

8. Nothing in sections six and seven shall be deemed to affect any provision contained in any instrument for the dissolution of such body, or for the payment or distribution of such property.

Questions may be referred to High Courts.

9. When any question arises, either in connection with the matters hereinbefore referred to, or otherwise, as to whether any person is a member of any such body as aforesaid, or as to the validity of any appointment under this Act, any person interested in such question may apply by petition to the High Court for its opinion on such question. A copy of such petition shall be served upon, and the hearing thereof may be attended by, such other persons interested in the question as the Court thinks fit.

Any opinion given by the Court on an application under this section shall be deemed to have the force of a declaratory decree.

The costs of every application under this section shall be in the discretion of the Court.

THE SCHEDULE.

(See Section 3.)

Memorandum of the appointment of new trustees of the (*describe the church, chapel, or other buildings and property*) situate at a meeting duly convened and held for that purpose (*in the vestry of the said*) on the _____ day of _____ 18 ____ A.B. of _____ Chairman.

Names and description of all the trustees on the constitution or last appointment of trustees, made under the _____ day of _____

(*here insert the same.*)

Name and descriptions of all the trustees in whom the said (*chapel and property*) now become legally vested.

First.—Old continuing trustees:—

(*here insert the same.*)

Second.—New trustees now chosen and appointed:—

(*here insert the same.*)

Dated this _____ day of _____ 18 ____
 Signed by the said A. B. as Chair-
 man of the said Meeting, at and in
 the presence of the said Meeting on
 the day and year aforesaid in the
 presence of—
 }
 } A. B.,
 } Chairman of the said Meeting.
 }
 } C. D.
 }
 } E. F.

THE PRESIDENCY SMALL CAUSE COURTS' ACT XV. OF 1882.

15. No Judge or other officer appointed under this Act shall, during his continuance as such Judge or officer, either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an advocate, attorney, vakil or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession.

Judge or other
officer not to
practise or
trade.

Any such Judge or officer so practising, acting or concerned shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any Company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament or Act of any British Indian legislature.

18. Subject to the exceptions in section nineteen, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—

Suits in which
Court has
jurisdiction.

when the amount or value of the subject-matter does not exceed two thousand rupees: and

(a) the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or

(b) all the defendants, at the time of the institution of the suit, actually and voluntarily reside, or carry on business, or personally work for gain, within such local limits; or

(c) any of the defendants, at the time of the institution of the suits, actually and voluntarily resides, or carries on business, or personally works for gain, within such local limits, and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

Explanation I.—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.

Explanation II.—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation III.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India, or in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

INDIAN EVIDENCE ACT I. OF 1872.

Entry in public record, made in performance of duty enjoined by law, when relevant.

Facts of which Court must take judicial notice.

35. An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

57. The Court shall take judicial notice of the following facts:

(6.) All seals of which English Courts would take judicial notice: the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor General or any Local Government in Council: the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorised to use by any Act of Parliament or other Act or Regulation having the force of law in British India.

PUBLIC DOCUMENTS.

Public documents.

74. The following documents are public documents:—

1. Documents forming the Acts, or records of the Acts—

- (i.) of the sovereign authority,
- (ii.) of official bodies and tribunals, and
- (iii.) of public officers legislative, judicial, and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country.

2. Public records kept in British India of private documents.

Private documents.

75. All other documents are private.

Certified copies of public documents.

76. Every public officer having the custody of a public document which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed whenever such officer is authorised by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation.—Any officer who by the ordinary course of official duty is authorised to deliver such copies shall be deemed to have the custody of such documents within the meaning of this section.

Production of such copies.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

PRESUMPTIONS AS TO DOCUMENTS.

79. The Court shall presume every document purporting to be a certified copy, or other document which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty who is duly authorised thereto by the Governor General in Council, to be genuine : Provided that such document is substantially in the form, and purports to be executed in the manner directed by law in that behalf. The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

Presumption as to genuineness of certified copies.

81. The Court shall presume the genuineness of every document purporting to be the *London Gazette*, or the *Gazette of India*, or the Government Gazette of any Local Government, or of any colony, dependency, or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

Presumption as to Gazettes.

82. When any document is produced to any Court purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp, or signature is genuine, and that the person signing it held at the time when he signed it the judicial or official character which he claims,

Presumption as to document admissible in England without proof of seal or signature.

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

Court may presume existence of certain facts.

(e) That judicial and official acts have been regularly performed ;

(f) That the common course of business has been followed in particular cases.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate such witness, or that it will expose, or tend, directly or indirectly, to expose such witness to a penalty or forfeiture of any kind ;

Witness not excused from answering on ground that answer will criminate.

Provided that no such answer which a witness shall be compelled to give shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

Proviso.

*In the High Court of Judicature at Bombay.*IN APPEALS FROM THE ORDINARY ORIGINAL CIVIL
JURISDICTION.

The following rules shall come into force on the 1st January 1883 in supersession of the rules in Chapter IV., page 45, High Court Rules:—

1. A memorandum of appeal shall be in the Form A hereto annexed, and shall be accompanied by a copy of the decree or order appealed against, but a copy of the judgment shall not be required.

2. The memorandum shall be presented to the prothonotary (except in insolvency matters, when it may be presented to the Judge in Chambers or to any division Court).

3. With the memorandum of appeal the appellant shall, unless allowed to appeal as a pauper or a wife in a divorce case, deposit in Court the sum of Rupees 500 as security for the costs of the respondent, or, if more than one, for the costs of each respondent having different interests and appearing by different attorneys, and shall obtain from the prothonotary a certificate of such deposit having been made.

4. If the memorandum of appeal fulfils the condition of rule 1, is accompanied by the certificate in rule 3 mentioned, and is presented within the time allowed by the Limitation Act, the prothonotary shall file the same.

5. The time requisite for obtaining a copy of a decree or order within the meaning of the Limitation Act, section 12, shall be deemed to be the time actually occupied in drawing up the original and issuing a copy thereof, which shall not exceed ten days.

6. The prothonotary shall reject the memorandum of appeal—

- (a) If the memorandum is not in accordance with rule 1, or unaccompanied by the certificate under rule 3.

- (b) If the appellant has not applied to the prothonotary or other officer whose duty it is to prepare the same, for a copy of the decree or order (and if necessary to have the original drawn up) within 20 days after the date of the judgment being pronounced.
- (c) If the memorandum is not presented within 20 days and such further time as is allowed by the preceding rule.
- (d) And in the case of appeals under the Indian Companies' Act, 1882, unless the notice required by section 169 of the said Act has been given.

7. When a memorandum of appeal is filed, the appellant or his attorney shall apply forthwith to the clerk of the Judge by whom the case was tried, for a copy of the Judge's notes of the trial, which copy must be certified by such Judge's clerk and must be filed with the prothonotary at least two days before the day fixed for the hearing of the appeal; a copy of the paper-book must also be forwarded by the appellant or his attorney to the clerk of each of the Judges sitting in appeal.

8. The paper-book shall contain a copy of the memorandum of appeal, decree or order, judgment (if any), plaint, written statement, and exhibits, and shall be properly paged and indexed.

9. When an appeal or application for review of judgment is presented in any Court after the period of limitation prescribed therefor, such appeal or application shall be accompanied by an affidavit, setting forth the cause of the delay.

Bombay, 1st December 1882.

FORM A.

In the High Court of Judicature at Bombay.
 Ordinary Original Civil Jurisdiction (on its
 Appellate Side).

Appeal No. .

Suit No. of 18 .

Appeal No. of 18
 Suit No. Appellant,
 vs. Respondent.
 ...

} Appellant and
 (plaintiff or
 defendant),

vs.

} Respondent
 and (defend-
 ant or
 plaintiff).

the

Appellant abovenamed appeals against
 the of
 the Honourable Mr. Justice

in the above

suit made on the

day of

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for the following amongst other
 reasons:—

1st—That (here follow the grounds
 of appeal).

By way of endorsement

TABLE B OF ACT XIX. OF 1857.

REGULATIONS FOR MANAGEMENT OF THE COMPANY.

See Section 2 of the Indian Companies Act VI. of 1882.

Shares.

1. No person shall be deemed to have accepted any share in the Company unless he has testified his acceptance thereof by writing under his hand in such form as the Company from time to time directs.

2. The Company may from time to time make such calls upon the shareholders in respect of all moneys unpaid on their shares, as they think fit, provided that twenty-one days' notice at least is given of each call; and each shareholder shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the Company.

3. A call shall be deemed to have been made at the time when the resolution authorising such call was passed.

4. If before or on the day appointed for payment, any shareholder does not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate of 5 per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

5. The Company may, if they think fit, receive from any of the shareholders willing to advance the same all or any part of the moneys due upon their respective shares beyond the sums actually called for; and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the shareholder paying such sum in advance and the Company agree upon.

6. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

7. The Company may decline to register any transfer of shares made by a shareholder who is indebted to them.

8. Every shareholder shall, on payment of such sum not exceeding eight annas as the Company may prescribe, be entitled to a certificate, under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.

9. If such certificate is worn out or lost, it may be renewed on payment of such sum, not exceeding eight annas, as the Company may prescribe.

10. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

11. The executors or administrators or representatives of a deceased shareholder shall be the only persons recognised by the Company as having any title to his share.

12. Any person becoming entitled to a share in consequence of the death, bankruptcy, or insolvency of any shareholder, or in consequence of the marriage of any female shareholder, or in any way other than by transfer, may be registered as a shareholder, upon such evidence being produced as may from time to time be required by the Company.

13. Any person who has become entitled to a share in any way other than by transfer may, instead of being registered himself, elect to have some person to be named by him registered as a holder of such share.

14. The person so becoming entitled shall testify such election by executing to his nominee a transfer of such share.

15. The instrument of transfer shall be presented to the Company, accompanied with such evidence as they may require to prove the title of the transferor, and thereupon the Company shall register the transferee as a shareholder.

Forfeiture of Shares.

16. If any shareholder fails to pay any call due on the appointed day, the Company may at any time thereafter, during such time as the call remains unpaid, serve a notice on him requiring him to pay such call, together with any interest that may have accrued by reason of such non-payment.

17. The notice shall name a further date, and a place or places being a place or places at which calls of the Company are usually made payable, on and at which such call is to be paid. It shall also state that, in the event of non-payment at the time and place appointed, the shares in respect of which such call was made will be liable to be forfeited.

18. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may be forfeited by a resolution of the Directors to that effect.

19. Any shares so forfeited shall be deemed to be the property of the Company, and may be disposed of in such manner as the Company thinks fit.

20. Any shareholder whose shares have been forfeited shall notwithstanding be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture.

Increase in Capital.

21. The Company may, with the sanction of the Company previously given in general meeting, increase its capital.

22. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

General Meetings.

23. The first general meeting shall be held at such time, not being more than twelve months after the incorporation of the Company, and at such place as the Directors may determine.

24. Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the Directors.

25. The abovementioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

26. The Directors may, whenever they think fit, and they shall, upon a requisition made in writing by any number of shareholders holding in the aggregate not less than one-fifth part of the shares of the Company, convene an extraordinary general meeting.

27. Any requisition so made by the shareholders shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

28. Upon the receipt of such requisition, the Directors shall forthwith proceed to convene a general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other shareholders holding the required number of shares, may themselves convene a meeting.

29. Seven days' notice at the least, specifying the place, the time, the hour of meeting and the purpose for which any general meeting is to be held, shall be given by advertisement, or in such other manner (if any) as may be prescribed by the Company.

See In re Indian Zedone Co. 26, Ch. Div. 70; and Buckley, 4th Ed., p. 161

30. Any shareholder may, on giving not less than three days' previous notice, submit any resolution to a meeting beyond the matters contained in the notice given of such meeting.

31. The notice required of a shareholder shall be given by leaving a copy of the resolution at the registered office of the Company.

32. No business shall be transacted at any meeting, except the declaration of a dividend, unless a quorum of shareholders is present at the commencement of

such business ; and such quorum shall be ascertained as follows (that is to say) if the shareholders belonging to the Company at the time of the meeting do not exceed ten in number, the quorum shall be five ; if they exceed ten, there shall be added to the above quorum one for every five additional shareholders up to fifty, and one for every ten additional shareholders after fifty, with this limitation, that it shall not be necessary for any quorum in any case to exceed forty.

33. If within one hour from the time appointed for the meeting the required number of shareholders is not present, the meeting, if convened upon the requisition of the shareholders, shall be dissolved ; in any other case it shall stand adjourned to the following day at the same time and place ; and if at such adjourned meeting the required number of shareholders is not present, it shall be adjourned *sine die*.

34. The Chairman (if any) of the Board of Directors shall preside as Chairman at every meeting of the Company.

35. If there is no such Chairman, or if at any meeting he is not present at the time of holding the same, the shareholders present shall choose some one of their number to be Chairman of such meeting.

36. The Chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place ; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

37. At any general meeting, unless a poll is demanded by at least five shareholders, a declaration by the Chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

38. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the Chairman directs ; and the result of such poll shall be deemed to be the resolution of the Company in general meeting.

Votes of Shareholders.

39. Every shareholder shall have one vote for every share up to ten ; he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares.

40. If any shareholder is a lunatic or idiot, he may vote by his Committee ; and if any shareholder is a minor, he may vote by his guardian, or any one of his guardians if more than one.

41. If more persons than one are jointly entitled to a share or shares, the person whose name stands first in the register of shareholders as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

42. No shareholder shall be entitled to vote at any meeting unless all calls due from him have been paid, nor until he shall have been possessed of his shares three calendar months, unless such shares shall have been acquired or shall have come by bequest, or by marriage, or by succession to an intestate's estate, or by any deed of settlement after the death of any person who shall have been entitled for life to the dividends of such shares.

43. Votes may be given either personally or by proxies. A proxy shall be appointed in writing under the hand of the appointer, or, if such appointer is a corporation, under their common seal.

44. No person shall be appointed a proxy who is not a shareholder, and the instrument appointing him shall be deposited at the registered office of the Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote ; but no instrument appointing a proxy shall be valid after the expiration of one month from the date of its execution.

Directors.

45. The number of the Directors, and the names of the first Directors, shall be determined by the subscribers of the memorandum of association.

46. Until Directors are appointed, the subscribers of the memorandum of association shall for all the purposes of this Act be deemed to be Directors.

Powers of Directors.

47. The business of the Company shall be managed by the Directors, who may exercise all such powers of the Company as are not by this Act or by the articles of association (if any) declared to be exercisable by the Company in general meeting, subject nevertheless to any regulations of the articles of association, to the provisions of this Act, and to such regulations, not being inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the Directors which would have been valid if such regulation had not been made.

Disqualification of Directors.

48. The office of Director shall be vacated—

If he holds any other office or place of profit under the Company.

If he becomes bankrupt or insolvent.

If he is concerned in or participates in the profits of any contract with the Company.

If he participates in the profits of any work done for the Company.

But the above rules shall be subject to the following exceptions:—that no Director shall vacate his office by reason of his being a shareholder in any incorporated Company which has entered into contracts with or done any work for the Company of which he is Director; nevertheless he shall not vote in respect of such contract or work; and if he does so vote, his vote shall not be counted, and he shall incur a penalty not exceeding five hundred rupees.

Rotation of Directors.

49. At the first ordinary meeting after the incorporation of the Company, the whole of the Directors shall retire from office; and at the first ordinary meeting in every subsequent year one-third of the Directors for the time being, or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

50. The one-third or other nearest number to retire during the first and second years ensuing the incorporation of the Company shall, unless the Directors agree among themselves, be determined by ballot; in every subsequent year the one-third or other nearest number who have been longest in office shall retire.

51. A retiring Director shall be re-eligible.

52. The Company at the general meeting at which any Directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

53. If at any meeting at which an election of Directors ought to take place no such election is made, the meeting shall stand adjourned till the next day, at the same time and place; and if at such adjourned meeting no election takes place, the former Directors shall continue to act until new Directors are appointed at the first ordinary meeting of the following year.

54. The Company may from time to time, in general meeting, increase or reduce the number of Directors, and may also determine in what rotation such increased or reduced number is to go out of office.

55. Any casual vacancy occurring in the Board of Directors may be filled up by the Directors; but any person so chosen shall retain his office so long only as the vacating Director would have retained the same if no vacancy had occurred.

Proceedings of Directors.

56. The Directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the Chairman, in addition to his original vote, shall have a casting vote. A Director may at any time summon a meeting of the Directors.

57. The Directors may elect a Chairman of their meetings and determine the period for which he is to hold office; but if no such Chairman is elected, or if at any meeting the Chairman is not present at the time appointed for holding the same, the Directors present shall choose some one of their number to be Chairman of such meeting.

58. The Directors may delegate any of their powers to Committees consisting of such member or members of their body as they think fit. Any Committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the Directors.

59. A Committee may elect a Chairman of their meetings. If no such Chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be Chairman of such meeting.

60. A Committee may meet and adjourn as they think proper. Questions at any meeting shall be determined by a majority of votes of the members present; and in case of an equal division of votes, the Chairman shall have a casting vote.

61. All acts done by any meeting of the Directors, or of a Committee of Directors, or by any person acting as a Director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

62. The Directors shall cause minutes to be made in books provided for the purpose—

- (1) Of all appointments of officers made by the Directors;
- (2) Of the names of the Directors present at each meeting of Directors and Committees of Directors;
- (3) Of all orders made by the Directors and Committees of Directors; and
- (4) Of all resolutions and proceedings of meetings of the Company, and of the Directors and Committees of Directors.

And any such minute as aforesaid, if signed by any person purporting to be the Chairman of any meeting of Directors or Committee of Directors, shall be receivable in evidence without any further proof.

63. The Company, in general meeting, may by a special resolution remove any Director before the expiration of his period of office, and appoint another qualified person in his stead. The person so appointed shall hold office during such time only as the Director in whose place he is appointed would have held the same if he had not been removed.

Dividends.

64. The Directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the shareholders in proportion to their shares.

65. The Directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a reserved fund to meet contingencies, or for equalising dividends, or for repairing or maintaining the works connected with the business of the Company, or any part thereof; and the Directors may invest the sum so set apart as a reserved fund upon such securities as they, with the sanction of the Company, may select.

66. The Directors may deduct from the dividends payable to any shareholder all such sums of money as may be due from him to the Company on account of calls or otherwise.

67. Notice of any dividend that may have been declared shall be given to each shareholder, or sent by post or otherwise, to his registered place of abode; and all dividends unclaimed for three years, after having been declared, may be forfeited by the Directors for the benefit of the Company.

68. No dividend shall bear interest as against the Company.

Accounts.

69. Once at the least in every year the Directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

70. The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting. And in cases where any item of expenditure which may in fairness be distributed over several years

has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

71. A balance-sheet shall be made out in every year, and laid before the general meeting of the Company; and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

72. A printed copy of such balance-sheet shall, seven days previously to such meeting, be delivered at or sent by post to the registered address of every shareholder.

Audit.

73. The accounts of the Company shall be examined, and the correctness of the balance-sheet ascertained by one or more auditor or auditors to be elected by the Company in general meeting.

74. If not more than one auditor is appointed, all the provisions herein contained relating to auditors shall apply to him.

75. The auditors need not be shareholders in the Company. No person is eligible as an auditor who is interested otherwise than as a shareholder in any transaction of the Company; and no Director or other officer of the Company is eligible during his continuance in office.

76. The election of auditors shall be made by the Company at their ordinary meeting, or, if there are more than one, at their first ordinary meeting in each year.

77. The remuneration of the auditors shall be fixed by the Company at the time of their election.

78. Any auditor shall be re-eligible on his quitting office.

79. If any casual vacancy occurs in the office of auditor, the Directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

80. If no election of auditors is made in manner aforesaid, the local Government may, on the application of one-fifth in number of the shareholders of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services.

81. Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

82. Every auditor shall have a list delivered to him of all books kept by the Company, and he shall at all reasonable times have access to the books and accounts of the Company; he may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the Directors or any other officer of the Company.

83. The auditors shall make a report to the shareholders upon the balance-sheet and accounts; and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs; and in case they have called for explanations or information from the Directors, whether such explanations or information have been given by the Directors, and whether they have been satisfactory; and such report shall be read, together with the reports of the Directors, at the ordinary meeting.

Notices.

84. Notices requiring to be served by the Company upon the shareholders may be served either personally, or by leaving the same, or sending them through the post in a letter addressed to the shareholders, at their registered places of abode.

85. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons is named first in the register of shareholders; and notice so given shall be sufficient notice to all the proprietors of such share.

FORM OF BALANCE-SHEET REFERRED TO IN TABLE B.

Dr.

BALANCE-SHEET of the

Company made up to

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Cr.

CAPITAL AND LIABILITIES.			PROPERTY AND ASSETS.		
		Rs. a. p.			Rs. a. p.
I. CAPITAL	Showing—		III. PROPERTY held by the Company ...	Showing—	
	1 The total amount received from the shareholders ; showing also— (a) The number of shares. (b) The amount paid per share. (c) If any arrears of calls, the nature of the arrear, and the names of the defaulters. Any arrears due from any director or officer of the Company to be separately stated. (d) The particulars of any forfeited shares.			4 Immoveable property, distinguishing (a) Land (describing tenure). (b) Buildings. 5 Moveable property, distinguishing— (c) Stock-in-trade. (d) Plant. (The cost to be stated, with deduction for deterioration in value as charged to the reserve fund or profit and loss).	
II. DEBTS AND LIABILITIES of the Company.	Showing—		IV. DEBTS owing to the Company ...	Showing—	
	2 The amount of loans on mortgage or debenture bonds. 3 The amount of debts owing by the Company, distinguishing— (a) Debts for which acceptances have been given. (b) Debts to tradesmen for supplies of stock-in-trade or other articles. (c) Debts for law expenses. (d) Debts for interest on debentures or other loans. (e) Unclaimed dividends. (f) Debts not enumerated above.			6 Debts considered good for which the Company hold bills or other securities. 7 Debts considered good for which the Company hold no security. 8 Debts considered doubtful and bad. Any debt due from a director or other officer of the Company to be separately stated.	
VI. RESERVE FUND ...	Showing— The amount set aside from profits to meet contingencies.		V. CASH AND INVESTMENT ...	Showing— 9 The nature of investment and rate of interest. 10 The amount of cash, where lodged, and if bearing interest.	
VII. PROFIT AND Loss ...	Showing— The disposable balance for payment of dividend, &c.				
CONINGENT LIABILITIES...	Claims against the Company not acknowledged as debts. Monies for which the Company is contingently liable.				

ACT No. XXI. OF 1860.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

*(Received the assent of the Governor General of India on the 21st May 1860.)**An Act for the Registration of Literary, Scientific, and Charitable Societies.*

The greater part of this Act is copied from Statute 17 and 18 Vic. c. 112 (An Act to afford greater facilities for the establishment of Institutions for the promotion of Literature and Science and the Fine Arts, and to provide for their better regulation).

Whereas it is expedient that provision should be made for improving the legal condition of Societies established for the promotion of Literature, Science, or the Fine Arts, or for the diffusion of useful knowledge, or for charitable purposes ; It is enacted as follows :—

Preamble.

1. Any seven or more persons associated for any Literary, Scientific, or Charitable purpose, or for any such purpose as is described in Section 20 of this Act, may, by subscribing their names to a Memorandum of Association, and filing the same with the Registrar of Joint Stock Companies under Act XIX of 1857 (a), form themselves into a Society under this Act.

(a) See sec. 355 of the Indian Companies Act VI of 1882, *supra*.

Memorandum of Association. 2. The Memorandum of Association shall contain the following things, (that is to say) —

The name of the Society.

The objects of the Society.

The names, addresses, and occupations of the Governors, Council, Directors, Committee, or other governing body to whom, by the Rules of the Society, the management of its affairs is entrusted. A copy of the Rules and Regulations of the Society certified to be a correct copy by not less than three of the Members of the governing body, shall be filed with the Memorandum of Association.

3. Upon such Memorandum and certified copy being filed, the Registrar shall certify under his hand that the Society is registered under this Act. There shall be paid to the Registrar for every such registration a fee of fifty Rupees, or such smaller fee as the Governor General of India in Council may from time to time direct ; and all fees so paid shall be accounted for to Government.

Registration.

Fees.

4. Once in every year, on or before the 14th day succeeding the day on which, according to the Rules of the Society, the Annual General Meeting of the Society is held, or if the Rules do not provide for an Annual General Meeting, in the month of January, a list shall be filed with the Registrar of Joint Stock Companies, of the names, addresses, and occupations of the Governors, Council, Directors, Committee, or other governing body then entrusted with the management for the affairs of the Society.

Annual list of managing body to be filed.

5. The property, moveable and immoveable, belonging to a Society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such Society, and in all proceedings, Civil and Criminal, may be described as the property of the governing body of such Society by their proper title.

Property of Society how to be vested.

Statute 17 and 18 Vic. c. 112, s. 20.

6. Every Society registered under this Act may sue or be sued in the name of the President, Chairman, or Principal Secretary, or Trustees, as shall be determined by the Rules and Regulations of the Society, and in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion; provided that it shall be competent for any person having a claim or demand against the Society, to sue the President or Chairman, or Principal Secretary, or the Trustees thereof, if on application to the governing body some other Officer or person be not nominated to be the defendant.

How suits by and against Societies to be brought.

17 and 18 Vic. c. 112, s. 21.

7. No suit or proceeding in any Civil Court shall abate or discontinue by reason of the person, by or against whom such suit or proceedings shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued, but the same suit or proceeding shall be continued in the name of or against the successor of such person.

Suits not to abate.

17 and 18 Vic. c. 112, s. 22.

8. If a judgment shall be recovered against the person or Officer named on behalf of the Society, such judgment shall not be put in force against the property, moveable or immoveable, or against the body of such person or Officer, but against the property of the Society. The application for execution shall set forth the judgment, the fact of the party against whom it shall have been recovered having sued or having been sued, as the case may be, on behalf of the Society only, and shall require to have the judgment enforced against the property of the Society.

How judgment to be enforced against.

17 and 18 Vic. c. 112, s. 23.

9. Whenever by any Bye-law duly made in accordance with the Rules and Regulations of the Society, or, if the Rules do not provide for the making of Bye-laws, by any Bye-law made at a General Meeting of the Members of the Society convened for the purpose (for the making of which the concurrent votes of three-fifths of the Members present at such Meeting shall be necessary), any pecuniary penalty is imposed for the breach of any Rule or Bye law of the Society, such penalty, when accrued, may be recovered in any Court having jurisdiction where the defendant shall reside, or the Society shall be situate; as the governing body thereof shall deem expedient.

Society may make Bye-laws to be enforced.

17 and 18 Vic. c. 112, s. 24.

10. Any Member who may be in arrear of a subscription which according to the Rules of the Society he is bound to pay, or who shall possess himself of or detain any property of the Society in a manner or for a time contrary to such Rules, or shall injure or destroy any property of the Society, may be sued for such arrear or for the damage accruing from such detention, injury, or destruction of property in the manner hereinbefore provided. But if the defendant shall be successful in any suit or other proceeding brought against him at the instance of the Society, and shall be adjudged to recover his costs, he may elect to proceed to recover the same from the Officer in whose name the suit shall be brought, or from the Society, and in the latter case shall have process against the property of the said Society in the manner above described.

Members liable to be sued as strangers.

17 and 18 Vic. c. 112, s. 25.

11. Any Member of the Society who shall steal, purloin, or embezzle any money or other property, or wilfully and maliciously destroy or injure any property of such Society, or shall forge any deed, bond, security for money, receipt, or other instrument, whereby the funds of the Society may be exposed to loss, shall be subject to the same prosecution, and if convicted, shall be liable to be punished in like manner, as any person not a Member would be subject and liable to in respect of the like offence.

Members guilty of offences punishable as strangers.

17 and 18 Vic. c. 112, s. 26.

12. Whenever it shall appear to the governing body of any Society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend, or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such Society either wholly or partially with any other Society, such governing body may submit the proposition to the Members of the Society in a written or printed report, and may convene a Special Meeting for the consideration thereof according to the Regulations of the Society; but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every Member of the Society ten days previous to the Special Meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the Members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second Special Meeting convened by the governing body at an interval of one month after the former Meeting.

17 and 18 Vic. c. 112, s. 27.

13. Any number not less than three-fifths of the Members of any Society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the Society, its claims, and liabilities, according to the Rules of the said Society applicable thereto, if any, and, if not, then as the governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the Members of the Society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the District in which the chief building of the Society is situate; and the Court shall make such order in the matter as it shall deem requisite. Provided that no Society shall be dissolved unless three-fifths of the Members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy, at a General Meeting convened for the purpose. Provided that whenever the Government is a Member of, or a contributor to, or otherwise interested in any Society registered under this Act, such Society shall not be dissolved without the consent of Government.

17 and 18 Vic. c. 112, s. 28, 29.

14. If upon the dissolution of any Society registered under this Act there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the Members of the said Society or any of them, but shall be given to some other Society, to be determined by the votes of not less than three-fifths of the Members present personally or by proxy at the time of the dissolution, or in default thereof, by such Court as aforesaid; provided however that this Clause shall not apply to any Society which shall have been founded or established by the contributions of shareholders in the nature of a Joint Stock Company.

17 and 18 Vic. c. 112, s. 30.

15. For the purposes of this Act a Member of a Society shall be a person who having been admitted therein according to the Rules and Regulations thereof, shall have paid a subscription, or shall have signed the roll or list of Members thereof, and shall not have resigned in accordance with such Rules and Regulations; but in all proceedings under this Act no person shall be entitled to vote or be counted as a Member whose subscription at the time shall have been in arrear for a period exceeding three months.

17 and 18 Vic. c. 112, s. 31.

16. The governing body of the Society shall be the Governors, Council, Directors, Committee, Trustees, or other body to whom by the Rules and Regulations of the Society the management of its affairs is entrusted.

17 and 18 Vic. c. 112, s. 32.

17. Any Company or Society established for a Literary, Scientific, or Charitable purpose and registered under Act XLIII of 1850, or any such Society established and constituted previously to the passing of this Act but not registered under the said Act XLIII of 1850, may at any time hereafter be registered as a Society under this Act; subject to the proviso that no such Company or Society shall be registered under this Act unless an assent to its being so registered has been given by three-fifths of the Members present personally, or by proxy, at some General Meeting convened for that purpose by the governing body. In the case of a Company or Society registered under Act XLIII of 1850, the Directors shall be deemed to be such governing body. In the case of a Society not so registered, if no such body shall have been constituted on the establishment of the Society, it shall be competent for the Members thereof, upon due notice, to create for itself a governing body to act for the Society thenceforth.

18. In order to any such Society as is mentioned in the last preceding Section obtaining registry under this Act, it shall be sufficient that the governing body file with the Registrar of Joint Stock Companies under Act XIX of 1857 (a), a Memorandum showing the name of the Society, the objects of the Society, and the names, addresses, and occupations of the governing body, together with a copy of the Rules and Regulations of the Society certified as provided in Section II, and a copy of the report of the Proceedings of the General Meeting at which the registration was resolved on.

(a) See the Indian Companies Act, 1882, sec. 255, *supra*.

19. Any person may inspect all documents filed with the Registrar under this Act on payment of a fee of one Rupee for each inspection; and any person may require a copy or extract of any document, to be certified by the Registrar, on payment of two annas for every hundred words of such copy or extract; and such certified copy shall be *prima facie* evidence of the matters therein contained in all legal proceedings whatever.

20. The following Societies may be registered under this Act, Charitable Societies, the Military Orphan Funds or Societies established at the several Presidencies of India, Societies established for the promotion of Science, Literature, or the Fine Arts, for instruction, the diffusion of useful knowledge, the foundation or maintenance of Libraries or Reading-rooms for general use among the Members or open to the public, or public Museums and Galleries of Paintings and other works of Art, Collections of Natural History, Mechanical and Philosophical Inventions, Instruments, or Designs.

17 and 18 Vic. c. 113, s. 33.

ACT XI. OF 1876.

An Act for constituting and regulating the Banks of Bengal, Madras and Bombay.

Whereas the Bank of Bengal is now constituted and regulated by Act No. IV. of 1862, as amended by Acts No. VI. of 1862 and No. XIX. of 1870, and its capital consists of twenty-two millions of rupees, in shares of one thousand rupees each ;

And whereas the Bank of Madras is now constituted and regulated by Madras Act No. VI. of 1866, as amended by Madras Act No. I. of 1871, and its capital consists of five millions six hundred and twenty-five thousand rupees, in shares of one thousand rupees each ;

And whereas a Bank named the Bank of Bombay was constituted and regulated by Bombay Act No. X. of 1863, as amended by Bombay Acts No. XV. of 1866 and No. I. of 1867 ; but such Bank has been wound up and the said Bombay Acts are now obsolete and should be expressly repealed ;

And whereas on the tenth day of December 1867, a joint-stock Banking Company was registered and incorporated at Bombay, by virtue of the Indian Companies Act, 1866, under the name of "The New Bank of Bombay, Limited," with a Memorandum of Association and Articles of Association then also registered, and prescribing the constitution and regulations for the management of such Bank ;

And whereas the Government of India now holds two thousand two hundred shares in the said Bank of Bengal, and five hundred and sixty-two and a half shares in the said Bank of Madras ; and, under the provisions of the said Act No. IV. of 1862 and Madras Act No. VI. of 1866, is bound to appoint, and has power to remove certain of the directors of the said Banks of Bengal and Madras respectively, and has also power to give a proxy to any person whom the Governor-General in Council may appoint, to attend and vote at any meeting of the proprietors of each of the same Banks ;

And whereas the Government of India has determined to sell its said shares and to surrender its said powers ; and it is expedient to relieve the said Government from the said duty of appointing directors, and to repeal the said enactments and to consolidate such of them as relate to the said Banks of Bengal and Madras respectively with the changes rendered necessary or desirable by such sale, surrender and relief ;

And whereas it is expedient to reduce the said capital of the Bank of Bengal by two millions of rupees and to reduce the said capital of the Bank of Madras by six hundred and twenty-five thousand rupees, and to divide the capital so reduced of each of the same Banks into shares of five hundred rupees each ;

And whereas it is expedient that the said New Bank of Bombay, Limited, should be reconstituted and regulated, in manner in this Act provided, under the name of the Bank of Bombay ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

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|---|---|
| Short title. | 1. This Act may be called "The Presidency Banks Act, 1876 ;" |
| Commencement. | And it shall come into force on the first day of May 1876. |
| 2. On and from that day the Statute specified in the first part of the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof, and the Acts specified in the second, third and fourth parts of the same schedule shall be wholly repealed. But all bye-laws and regulations made under any such Act, and then in force, shall, so far as they are consistent with this Act, be deemed to have been made hereunder. | |
| Repeal of enactments. | |
| References in Act X. of 1866. | The references made in the Indian Companies Act, 1866, to the Bank of Bengal, the Bank of Madras and the Bank of Bombay, shall be deemed to be made respectively to the Bank of Bengal, the Bank of Madras and the Bank of Bombay as constituted by this Act. |

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context—

"The Bank" means the Bank of Bengal, the Bank of Madras, or the Bank of Bombay (as the case may be), as constituted and regulated by this Act :

"Capital" means the capital for the time being of the Bank :

"Shares" means the shares for the time being of the capital, and includes also half shares :

"Capital stock" means that part of the capital into which wholly paid-up shares have been converted or consolidated, and in the case of the Bank of Bengal and the Bank of Madras includes the present consolidated stock of such Banks respectively :

"Registered" means registered in the books of the Bank :

"Shareholders" means the duly registered holders from time to time of the shares of the Bank :

"Proprietors" means the duly registered holders from time to time of the capital stock of the Bank :

"Directors" means the directors assembled for the purpose of performing any of their functions under this Act :

"Board" means a meeting of the directors duly called and constituted, or, as the case may be, the directors assembled at a Board :

"Auditors" and "Secretary" mean those respective officers from time to time of the Bank, and "Secretary" includes a Secretary and Treasurer and a Deputy Secretary :

"General meeting" means the meeting of proprietors or shareholders or both, held annually under section forty-nine ; it includes any adjourned holding thereof :

"Special meeting" means a meeting of proprietors or shareholders or both, held for the transaction of some particular business specified in the notice convening the meeting ; it includes any adjourned holding thereof :

"Special resolution" means a resolution passed at a special meeting :

"Office" means the office or principal office for the time being of the Bank :

"Goods" includes also bullion, wares and merchandise :

"Presidency of Fort St. George" means the territories now under the government of the Governor of Fort St. George in Council :

"Presidency of Bombay" means the territories now under the government of the Governor of Bombay in Council ; and

"Presidency of Fort William" means all the territories in British India other than the Presidency of Fort St. George and the Presidency of Bombay.

CHAPTER II.

CONSTITUTION.

4. The several persons who, when this Act comes into force, are respectively the proprietors and shareholders of the said Bank of Bengal, Bank of Madras and New Bank of Bombay, Limited (hereinafter called the present Banks), or who shall, at any time thereafter, by virtue of this or any other Act regulating the

Proprietors and shareholders of present Banks to form bodies corporate.

Bank, become proprietors or shareholders, shall continue and constitute and be bodies corporate with perpetual succession, under the name,

in the case of the proprietors and shareholders of the said Bank of Bengal—of "The Bank of Bengal,"

in the case of the proprietors and shareholders of the said Bank of Madras—of "The Bank of Madras," and

in the case of the shareholders and proprietors of the said New Bank of Bombay, Limited—of "The Bank of Bombay,"

and shall respectively possess and enjoy all the rights, powers and immunities incident by law to a corporation aggregate ; subject, nevertheless, to the provisions of this or any other Act for the time being in force regulating the Bank,

and, in particular, the proprietors of the Bank shall not be liable for its debts and engagements, and the shareholders of the Bank shall be so liable only to the extent of their shares not fully paid up.

with limited liability.

The several persons who are then proprietors and shareholders of each of the present Banks of Bengal and Madras, or the executors or administrators of such proprietors and shareholders respectively, shall be entitled to be registered as proprietors and holders of a like quantity of stock and a proportionate

Proprietors and shareholders of present Banks to be proprietors and shareholders of new Banks.

number of shares, as is or are then registered in their names respectively, or in the names of the person whom they represent respectively in the books of each of the said present Banks of Bengal and Madras, two shares in the Bank of Bengal as constituted by this Act being deemed equivalent to one share in the present Bank of Bengal, and two shares in the Bank of Madras as constituted by this Act being deemed equivalent to one share in the present Bank of Madras,

and the several persons who are then shareholders of the said New Bank of Bombay, Limited, or the executors or administrators of such shareholders respectively, shall be registered as holders of a like number of shares of the Bank of Bombay as constituted by this Act as are then registered in their names respectively, or in the names of the persons whom they represent respectively in the books of the said New Bank of Bombay, Limited; and all such shares upon which the sum of five hundred rupees has then been paid, shall be deemed to have been fully paid up.

5. All the property, moveable and immoveable, and all the securities, claims and demands, and the benefits of all agreements, of or to the said present Banks and demands, which the present Banks are or shall be respectively possessed or entitled, or which shall, or but for this Act might be, on the said first day of May 1876, or might at any time thereafter have been due to, or claimed by, the said Banks respectively shall, by virtue of this Act, become vested in and devolve upon, and may be claimed, made and recovered by,

in the case of the said Bank of Bengal,—the Bank of Bengal as constituted by this Act,

in the case of the said Bank of Madras,—the Bank of Madras as constituted by this Act,

and in the case of the said New Bank of Bombay, Limited,—the Bank of Bombay as constituted by this Act;

and the Bank shall, from and after the said first day of May 1876, be liable and subject to all debts, claims and demands which shall then be due or claimable from, or which, but for this Act might be then, or might at any time thereafter, have been due or claimable from or made against the said Bank of Bengal, Bank of Madras, or New Bank of Bombay, Limited, as the case may be,

and no suit or legal proceeding then pending by or against the said Bank of Bengal, Bank of Madras or New Bank of Bombay, Limited, shall cease, or abate, or become defective, in consequence of this Act, but may be continued and prosecuted by or against the Bank.

6. The transfer of the assets and liabilities of the said New Bank of Bombay, Limited, to the Bank of Bombay by virtue of this Act, shall operate as a winding up and liquidation of the said New Bank of Bombay, Limited.

No shareholder or creditor of the said New Bank of Bombay, Limited, shall take any proceedings for winding up the same under the Indian Companies Act, 1866, or any Act for the time being in force relating to the winding up of Companies;

and no person shall make, assert, or take any claims, demands or proceedings against the same Bank, or the directors or officers thereof, except so far as may be necessary for enforcing the provisions of this or any other Act for the time being in force regulating the Bank of Bombay.

7. The Bank shall sue and be sued by its said corporate name; and shall use such corporate seal as the directors from time to time appoint;

and may as such body corporate acquire and hold, either absolutely or conditionally, for a term or in perpetuity, any property whatsoever, moveable or immoveable, and transfer, assign and convey the same.

8. The seal of the Bank shall not be affixed to any instrument except in the presence of at least two directors and of the Secretary and Treasurer, who shall sign their names to the instrument in token of their presence, and such signing shall be independent of the signing of any person who may sign the instrument as a witness.

Unless so signed as aforesaid, such instrument shall be of no validity.

Contracts how made.

9. Contracts may be made on behalf of the Bank as follows :—

(a) any contract which, if made between private persons, would be by law required to be in writing, and, if made according to English law, to be under seal, may be made on behalf of the Bank in writing under its corporate seal, and such contract may be in the same manner varied or discharged :

(b) any contract which, if made between private persons, would be by law required to be in writing signed by the parties to be charged therewith, may be made on behalf of the Bank by writing signed by any person acting under the express or implied authority of the Bank, and such contract may in the same manner be varied and discharged :

(c) any contract which, if made between private persons, would by law be valid although made by parol only and not reduced into writing, may be made by parol on behalf of the Bank by any person acting under the express or implied authority of the Bank, and such contract may in the same manner be varied and discharged :

and all contracts made according to the provisions herein contained shall be effectual in law and shall be binding upon the Bank and other parties thereto and their legal representatives.

CHAPTER III.

CAPITAL.

10. The capital of the Bank of Bengal shall consist of twenty millions of rupees, in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided, to thirty millions of rupees.

The capital of the Bank of Madras shall consist of five millions of rupees, in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided, to twelve millions of rupees.

The capital of the Bank of Bombay shall consist of ten millions of rupees, in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided, to twenty millions of rupees.

11. The capital of the said New Bank of Bombay, Limited, already created, shall, on the first day of May 1876, constitute the capital of the Bank of Bombay, subject to be increased as aforesaid.

12. Any shareholder may from time to time surrender his wholly paid up shares, or any of them, to the directors, and demand and receive from the Bank, in lieu thereof, capital stock to the amount represented by the shares so surrendered,

and any proprietor may from time to time surrender his stock or any portion thereof, to the directors, and demand and receive from the Bank, in lieu thereof, shares to the like amount, or as near thereto as practicable.

13. The proprietors and shareholders of the Bank may from time to time, by special resolution and with the previous sanction of the Governor-General in Council, increase or reduce the capital of the Bank :

Provided that no such special resolution shall be deemed to have been passed, unless at least one-third in number of the proprietors or shareholders, holding at least one-half of the paid-up capital of the Bank for the time being, be present in person or by proxy, and a majority poll by open voting in favour of the said resolution.

14. When any such special resolution to increase the capital has been passed, the directors may, subject to the provisions of this or any other Act for the time being in force regulating such Bank, and to the special direction (if any) given in reference thereto by the meeting at which such resolution has been passed,

(a) make such orders as they think fit for the opening of subscriptions towards such increase of capital by the proprietors and shareholders;

(b) allow to the proprietors and shareholders such period to fill up the subscription as to the directors seems fit;

(c) prescribe the manner in which the proprietors and shareholders shall subscribe and pay into the Bank the proportions of new capital which they may respectively desire to subscribe; and

(d) make such orders as the directors think fit for the disposal and allotment of the amount of new capital that may not be subscribed for and paid up in manner aforesaid:

Provided that the capital shall not exceed, in the case of the Bank of Bengal, thirty millions of rupees, in the case of the Bank of Madras, twelve millions of rupees, and in the case of the Bank of Bombay, twenty millions of rupees.

15. When any such special resolution to reduce the capital has been passed, the directors may (subject as aforesaid) prescribe the manner in which the reduction shall be carried into effect.

Procedure on resolution to reduce capital.

16. Any new capital created under the provisions of section thirteen shall be subject to the provisions of this or any other Act regulating the Bank in force for the time being.

New capital to be subject to provisions of Act.

CHAPTER IV.

FORFEITURE OF STOCK AND SHARES.

17. If any proprietor or shareholder is indebted to the Bank, the Bank may withhold payment of the dividends on the stock or shares of such proprietor or shareholder not being registered as held in trust, or as executor or administrator, and apply them in payment of the debt;

and the Bank may refuse to register the transfer of any such stock or shares until payment of such debt;

and after demand and default of payment, and notice in that behalf given to such proprietor or shareholder, or his constituted agent, or by public advertisement in the local official gazette, if the debt remain unpaid for the space of three months after such notice, the Bank may advertise in the local official gazette such stock or shares for sale on a day not less than fifteen days from the publication of such advertisement;

and may, on such day, sell by public auction, and subject to such conditions, if any, as the Bank think fit, such stock or shares, or so much or so many thereof as may be necessary, and apply the proceeds thereof in or towards payment of the said debt, with interest, from the day appointed for the payment of such debt to the time of actual payment, at such rate as may have been agreed upon, or, in the absence of such agreement, at the highest rate current for advances by way of local discounts by the Bank;

and shall pay over the surplus, if any, to such proprietor or shareholder or to his lawful representative.

CHAPTER V.

CERTIFICATES, TRANSFER AND TRANSMISSION OF SHARES AND STOCK.

18. Every shareholder shall be entitled to a certificate, under the corporate seal of the Bank, and signed by two directors and the Secretary and Treasurer, specifying the shares held by him, and in the case of shares which are not wholly paid up, the amount paid thereon, and any holder of more than one half share may, at his option, demand a certificate for each such half share, or one or more certificates for all or any of such half shares, and such certificate or certificates shall be delivered to him accordingly: Provided that the number of such certificates shall in no case exceed the number of half shares in respect of which they are so delivered.

Every proprietor of capital stock shall be entitled to a receipt signed by two directors and the Secretary and Treasurer, and specifying the amount of stock held by him, and any such proprietor

Receipts for stock.

may, at his option, demand one receipt for the whole of the stock, or separate receipts for any portions of the stock so held by him, and such receipt or receipts shall be delivered to him accordingly : Provided that no receipt shall be delivered for a portion of stock less than two hundred and fifty rupees.

For every certificate and receipt delivered under this section there shall be paid such fee as may for the time being be prescribed under section sixty-three, clause (k) : Provided that no fee shall be payable for certificates or receipts delivered to the persons referred to in section four for shares in or stock of the Bank.

Certificates and receipts to be evidence.

Every such certificate and receipt shall be *prima facie* evidence of the title of the shareholder or proprietor to the shares or stock therein specified.

19. The stock and shares of every proprietor and shareholder shall be moveable property, capable of being transferred in manner provided by the regulations contained herein, or in any other Act regulating the Bank for the time being in force, and shall not be of the nature of immoveable property ; and each share shall be distinguished by its appropriate number.

Form of transfer to be approved by Board.

20. Every transfer of stock or shares may be by endorsement on the certificate or in such other form as the Board from time to time may approve, and shall be presented to the Bank accompanied by such evidence as the Board may require to prove the title of the transferor.

Every such transfer shall be verified in such manner as the Board require, and the Board may refuse to register any such transfer until the same be so verified, and, in the case of shares not fully paid up, unless the transferee is approved by the Board.

Board may require evidence of transmission.

The transferor shall be deemed to remain the proprietor or holder of the stock or shares transferred until the name of the transferee is registered in respect thereof.

21. The directors may from time to time close the register and transfer-books of the Bank for any period or periods not exceeding in the whole thirty days in any twelve consecutive months.

Power to close transfer-books.

22. The proprietors and shareholders for the time being, and no other persons, shall be members respectively of the bodies corporate hereby constituted,

and except for the purpose of excluding the provisions of section seventeen, the Bank shall not be bound or affected by notice of any trust to which any stock or share may be subject in the hands of the proprietor or holder thereof ;

Notice of trusts.

and when any stock or share is vested in more than one proprietor or holder, such proprietors or shareholders shall, as between themselves and the Bank, be considered as joint owners with benefit of survivorship :

Shares vested in several holders.

Provided that, as regards voting at meetings, service of notices, and receipt of dividend, the person whose name stands first in the register as one of the proprietors or holders of such stock or shares shall be deemed the sole proprietor or holder thereof.

23. When by the death of any proprietor or shareholder his stock or shares shall devolve on his legal representative, the bank shall not be bound to recognize any legal representative of such proprietor or shareholder other than a person who has taken out, from a Court having jurisdiction in this behalf, probate of the will or letters of administration to the estate of the deceased.

Any person becoming entitled to stock or shares in consequence of the insolvency or bankruptcy of any proprietor or shareholder, or in consequence of the marriage of any female proprietor or shareholder, may be registered as a proprietor or shareholder upon such evidence being produced as the directors may from time to time require.

Transmission on insolvency or marriage.

CHAPTER VI.

DIRECTORS.

24. The business of the Bank shall be managed by the Board, which shall in the first instance consist of six directors, and may subsequently consist of such number, not less than six, and not more than nine, as may be fixed by a special resolution.

Board.

Such directors shall be selected by vote of a general or special meeting.

Quorum.

Three of the directors shall form a quorum for the transaction of business.

25. The persons who, on the first day of May 1876, are respectively directors of the Bank of Bengal, the Bank of Madras, and the New Bank of Bombay, Limited, shall be respectively directors of the Bank of Bengal, the Bank of Madras, and the Bank of Bombay, as constituted by this Act, subject to removal as hereinafter provided and to the other provisions herein contained.

Present directors to be continued.

Two directors to go out by rotation annually.

26. The two directors who have been longest in office shall go out of office at the general meeting.

Any director so retiring may be re-elected at such meeting; and if any question arise as to which of the directors who have been the same time in office shall retire, such question shall be decided by the directors by ballot.

27. *Clause 1.*—No person shall be qualified to serve as a director of a Bank who is not a proprietor or holder in his own right of unencumbered stock or shares of such Bank, to the nominal amount of ten thousand rupees at the least.

Qualification of directors.

Disqualification of directors.

Clause 2.—No person shall be qualified to serve as a director—

If he holds the office of director, provisional director, promoter, agent or manager of any other joint-stock Bank established, or having a branch or agency, in British India, or advertised as about to be established, or to have a branch or agency, in British India; or

If he is a salaried officer of Government not specially authorized by the Governor-General in Council to serve as a director;

And the office of director shall be vacated—

If the person holding it resigns his office or dies;

If he accepts or holds any other office of profit under the Bank;

If he becomes insolvent or bankrupt, or compounds with his creditors;

If he is declared lunatic, or becomes of unsound mind;

If he is absent from the Board for more than three consecutive months;

If he ceases to hold in his own right the amount or number of unencumbered stock or shares required to qualify him for the office.

Clause 3.—No two persons who are partners of the same mercantile firm, or one of whom is the general agent of, or holds a power of procuration from, the other, or from a mercantile firm of which the other is a partner, shall be eligible or qualified to serve as directors at the same time.

Co-partners of same firm not to serve as directors at same time.

Clause 4.—The proprietors or shareholders may by a special resolution passed by the votes of proprietors or shareholders holding in the aggregate not less than one-half of the capital, remove any director before the expiration of his period of office, and appoint, in his stead, a qualified person, who shall in all respects stand in his place.

Power to remove directors.

28. At the first meeting of the directors in every year, they shall choose a president and vice-president from among themselves, and whenever the office of president or vice-president becomes vacant, they shall, at their next meeting, choose a successor for the remainder of the current year.

Directors to choose president and vice-president.

The president, or in his absence the vice-president, shall be chairman at all meetings whether of directors or of proprietors or shareholders, or of proprietors and shareholders, and shall have

Chairman.

Casting vote.

an additional or casting vote in all cases of an equal division of votes: Provided that if both the president and vice-president be absent at any meeting, the directors present shall elect a chairman for such meeting, from

among themselves, and such chairman shall, in case of an equal division of votes, have an additional or casting vote

29. The Board shall have power at any time, and from time to time, to supply
Vacancies among directors how filled up. any vacancies in their number arising from the death, resignation, or disqualification, under section twenty-seven, of any director.

Any director so appointed shall, for the purposes of section twenty-six, be considered to have held office from the date on which the director in whose place he is appointed was elected, or (where such director was appointed under this section) from the date on which his mediate or immediate predecessor was elected.

Acts of directors valid notwithstanding subsequent discovery of disqualification. 30. All acts done by any person acting in good faith as a director shall be as valid as if he was a director notwithstanding it be afterwards discovered that there was some defect in his appointment or qualification.

31. Every director shall be indemnified by the Bank against all losses and expenses incurred by him in or about the discharge of his duties, except such as happen from his own wilful act or default.
Indemnity of directors.

No director shall be responsible for any other director or for any officer, clerk or servant of the Bank, or for any loss or expense happening to the Bank by the insufficiency or deficiency of value of, or title to, any property or security acquired or taken on behalf of the Bank, or by the insolvency, bankruptcy or wrongful act of any customer or debtor of the Bank, or by anything done in the execution of the duties of his office or in relation thereto, or otherwise than for his own wilful act or default.

CHAPTER VII.

OFFICERS OF THE BANK.

32. The directors shall have power—

Appointment, salaries, suspension and removal of officers. to appoint such officers, clerks and servants as may be necessary to conduct the business of the Bank,

to grant salaries, pensions and other emoluments to such officers, clerks and servants, and

to suspend or remove any officer, clerk or servant of the Bank.

33. The Secretary and such other officers of the Bank as the directors may by writing notify in the local official Gazette (and in the case of the Bank of Bengal, also in the *Gazette of India*) are hereby severally empowered for and on behalf of the Bank to endorse and transfer promissory notes, stock-receipts, stock, debentures, shares, securities and documents of title to goods standing in the name of, or held by, the Bank,

and to draw, accept and endorse bills of exchange, bank post-bills, and letters of credit, in the current and authorized business of the Bank,

and to sign all other accounts, receipts and documents connected with such business

Officers forbidden to engage in other commercial business. 34. No Secretary, Inspector, Manager, or Accountant in the service of the Bank, and no Khazáuchi, Cashier or Shroff in the service of the Bank at the principal Office,

and without the previous sanction of the Board, no Agent, Khazáuchi, Cashier or Shroff at any branch or agency of the Bank,

shall engage in any other banking or commercial business, either on his own account or as agent for any other person or persons, or shall act as broker or agent for the sale or purchase of Government or other securities.

35. Every person appointed to hold, or act in any one or more of the said offices and every other officer from whom the directors may from time to time think fit to require it, shall give security to the directors, for the faithful discharge of his duty to the satisfaction of the directors, in such amount and in such manner as they think proper.

The security to be given as aforesaid by the person holding or acting in the office of Secretary shall not be in a less amount than fifty thousand rupees.

CHAPTER VIII.

BUSINESS.

Business which Banks may transact.

36. The Bank is authorised to carry on and transact the several kinds of business hereinafter specified (that is to say)—

(a) the advancing and lending money, and opening cash-credits, upon the security of—

- (1) promissory notes, debentures, stock and other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland ;
- (2) bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India ;
- (3) stock or debentures of, or shares in, Railway or other Companies, the interest whereon shall have been guaranteed by the Secretary of State for India in Council ;
- (4) debentures or other securities for money issued by, or on behalf of, any municipal body under the authority of any Act of a legislature established in British India ;
- (5) bullion or other goods which, or the documents of title to which, are deposited with, or assigned to, the Bank as security for such advances, loans or credits ; and
- (6) accepted bills of exchange and promissory notes indorsed by the payees :

Provided that such advances and loans may be made, if the directors think fit, to the Secretary of State for India in Council, without any specific security ;

(b) the selling and realization of the proceeds of sale of any such promissory notes, debentures, stock-receipts, bonds, annuities, stocks, shares, securities, bullion or goods, which, or the documents of title to which have been deposited with, or assigned to, the Bank as security for such advances, loans or credits, or which are held by the Bank, or over which the Bank is entitled to any lien or charge in respect of any such loan or advance or credit or any debt or claim of the Bank, and which have not been redeemed in due time in accordance with the terms and conditions (if any) of such deposit or assignment ;

(c) the drawing, discounting, buying and selling of bills of exchange and other negotiable securities payable in India, or (in the case of the Bank of Madras) in Ceylon ;

(d) the investing of the funds of the Bank upon any of the securities specified in paragraph (a) of this section, clauses (1), (2), (3), and (4), and converting the same into money when required,

and from time to time altering, converting and transposing such investments for or into others of the investments above specified ;

(e) the making, issuing and circulating of bank post-bills and letters of credit made payable in India, or (in the case of the Bank of Madras) in Ceylon, to order, or otherwise than to the bearer on demand ;

(f) the buying and selling of gold and silver, whether coined or uncoined ;

(g) the receiving of deposits and keeping cash-accounts on such terms as may be agreed on ;

(h) the acceptance of the charge and management of plate, jewels, title-deeds or other valuable goods on such terms as may be agreed upon ;

(i) the selling and realising of all property, whether moveable or immoveable, which may in any way come into the possession of the Bank in satisfaction or part satisfaction of any of its claims ;

(j) the transacting of pecuniary agency business on commission ;

(k) the acting as agent on commission in the transaction of the following kinds of business (namely) :—

(1) the buying, selling, transferring and taking charge of any securities, or any shares, in any public Company ;

(2) the receiving of the proceeds, whether principal, interest or dividends, of any securities or shares ;

(3) the remittance of such proceeds at the risk of the principal by public or private bills of exchange, payable either in India or elsewhere ;

(l) the drawing of bills of exchange, and the granting of letters of credit, payable out of India, for the use of principals for the purpose of the remittances mentioned in the last preceding clause of this section ;

(m) the buying, for the purpose of meeting such bills or letters of credit, of bills of exchange payable out of India, at any usance not exceeding six months ;

(n) and, generally, the doing of all such matters and things as may be incidental or subsidiary to the transacting of the various kinds of business hereinbefore specified.

(o) It shall also be lawful for the Bank under any arrangement or agreement with the Secretary of State for India in Council—

(1) to act as banker for, and to pay, receive, collect and remit money, bullion and securities on behalf of the Government ;

(2) to undertake and transact any other business which the Government may from time to time entrust to the Bank.

And the directors shall have power from time to time to arrange and settle with the Governor-General in Council the terms of remuneration on which such business shall be undertaken by the Bank, and also as to the examination and audit from time to time of the accounts and affairs of the Bank by or on behalf of the Governor-General in Council.

37. The directors shall not transact any kind of banking business other

Business which Banks may than those above specified, and in particular they shall not not transact. make any loan or advance—

(a) for a longer period than three months ; or

(b) upon the security of stock or shares of the Bank of which they are directors ; or

(c) upon mortgage, or in any other manner upon the security, of any immoveable property, or the documents of title relating thereto.

(d) Nor shall they lend or advance, by discount of bills or otherwise, to any individual or partnership firm (except upon the security mentioned in section thirty six, paragraph (a), numbers (1) to (5) inclusive), any sums of money exceeding in the whole at any one time such sum as may be prescribed by the bye-laws for the time being in force.

(e) Nor shall they discount or buy, or advance and lend, or open cash-credits on the security of any negotiable instrument of any individual or partnership firm, payable in the town or at the place where it is presented for discount, which does not carry on it the several responsibilities of at least two persons or firms unconnected with each other in general partnership.

(f) Nor shall they discount or buy, or advance and lend, or open cash-credits on the security of any negotiable security having at the date of the proposed transaction a longer period to run than three months, or if drawn after sight, drawn for a longer period than three months : Provided that, in the case of the Bank of Madras, the directors may discount negotiable securities payable in Ceylon having at the date of the transaction a period to run not exceeding four months.

Nothing contained in this Act shall be deemed to prevent the directors from allowing any person who keeps an account with the Bank from overdrawing such account without security, to the extent of sums not exceeding at any one time two thousand rupees in the whole.

38. Until the expiration of at least fourteen days after notice has been given

Sums payable by or to Government to be payable by notification of the Governor-General in Council published, in the case of the Bank of Bengal, in the *Gazette of India* and the *Calcutta Gazette*, and in the cases of the Bank of Madras and the Bank of Bombay, in the local official *Gazette*, that the Bank will no longer act as banker for, or pay, receive, collect or remit money, bullion and securities on behalf of the Government,

all sums payable by or to the Secretary of State for India in Council, or by or to the Governor-General in Council, or the Government of Bengal or the Governor of Fort St. George in Council or the Governor of Bombay in Council, on behalf of the Secretary of State for India in Council, at the General Treasury of Fort William in Bengal, or at the General Treasury at Madras, or at the General Treasury at Bombay,

shall be payable—

in the case of the Secretary of State for India in Council, or the Governor-

General in Council—at the office of the Bank of Bengal, the Bank of Madras, or the Bank of Bombay, as the case may be ;

in the case of the Government of Bengal—at the office of the Bank of Bengal ;

in the case of the Governor of Fort St. George in Council—at the office of the Bank of Madras ; and

in the case of the Governor of Bombay in Council—at the office of the Bank of Bombay.

39. Whenever presentment of any promissory note, bond or other security for payment or any other purpose at any of the said General Treasuries would heretofore have been necessary or sufficient, presentment for such purpose shall be necessary or sufficient (as the case may be) until the expiration of fourteen days after the giving of the notice mentioned in section thirty-eight—

in the case of the General Treasury of Fort William—at the office of the Bank of Bengal ;

in the case of the General Treasury at Madras—at the office of the Bank of Madras ; and

in the case of the General Treasury at Bombay—at the office of the Bank of Bombay.

40. The office of the Bank of Bengal shall be at Calcutta, that of the Bank of Madras shall be at Madras, and that of the Bank of Bombay shall be in the Island of Bombay ;

and the business of the Bank shall be carried on at its office, and at such other place or places in India as the Board may deem advisable, under the provisions of section forty-two.

41. For the purpose of providing offices and places in and at which to carry on and manage the business of the Bank, and proper residences for its agents, the directors may—

(a) acquire any interest in immovable property, and
(b) sell, buy in, re-sell, exchange, let, furnish, repair, insure against fire, and otherwise deal with all or any part of the same as they may consider most conducive to the interest of the Bank.

42. It shall be lawful for the directors to maintain as branches or agencies of the Bank, any branches or agencies of the present Banks, which may be in existence on the first day of May 1876,

and, from time to time, to establish branches or agencies at such places within the Presidency in which the Bank is situate as they deem advantageous to the interest of the Bank,

and, with the previous consent of the Governor-General in Council, and subject to such restrictions as to the business to be transacted as he thinks fit in each case to impose (such consent and restrictions being notified in the *Gazette of India*), to establish branches or agencies at such places outside the Presidency in which the Bank is situate, as the directors deem advantageous for the interests of the Bank :

Provided that no agency of the Bank now or hereafter established in Bombay, Calcutta or Madras shall advance, or lend money, or open cash-credits on securities, or receive deposits and keep cash accounts, or discount bills of exchange drawn and payable in the Presidency in which it is so established,

or shall act as agent on commission, or transact any business except as agent of its principal Bank, or any of its branches or other agencies.

The directors may discontinue any branch or agency maintained or established under this section.

CHAPTER IX.

ACCOUNTS AND DIVIDENDS.

43 The directors shall cause the books of the Bank to be balanced on every thirty-first day of December and every thirtieth day of June.

A statement of the balance at every such period, signed by a majority of the directors, shall be forthwith sent to a Secretary to the Government of India, and in the cases of the Bank of Madras and the Bank of Bombay, also to a Secretary to the Local Government.

The Governor-General in Council in the case of each of the said Banks, and the Local Government in the case of the Bank of Madras and the Bank of Bombay, shall (so long as any such arrangement with the Government as aforesaid, which has already been, or shall hereafter be entered into remains in force) at all times be entitled to require of the directors any information touching the affairs of the Bank and the production of any document of the Bank,

and in the case of each of the said Banks, the Governor-General in Council may require the publication of such statements of its assets and liabilities at such intervals and in such form and manner as the Governor-General in Council thinks fit.

Every requisition under this section shall be signified in writing under the hand of a Secretary to the Government of India or to the Local Government (as the case may be), and the directors shall comply with every such requisition.

44. An account of the profits of the Bank during the previous half-year shall be taken on or immediately after every thirty-first day of December and every thirteenth day of June,

and a dividend shall be made as soon thereafter as conveniently may be, and the amount of such dividend shall be determined by the directors, subject to the provisions of section forty-five.

No unpaid dividend shall bear interest as against the Bank.

45. The directors, before declaring any dividend, may set aside out of the profits of the Bank such a sum as they think proper as a reserve fund, and invest the same upon any of the securities specified in section thirty-six, paragraph (a), clauses (1), (2), (3) and (4).

46. The directors may from time to time apply such portion as they think fit of the reserve fund to meet contingencies, or for equalizing dividends, or for any other purposes of the Bank, which they from time to time deem expedient.

CHAPTER X.

AUDIT.

47. Two auditors shall be elected and their remuneration fixed at the annual general meeting.

The auditors may be proprietors or shareholders; but no director or other officer of the Bank is eligible during his continuance in office.

Auditors re-eligible. Any auditor shall be re-eligible on his quitting office.

The persons who shall be auditors on the first day of May 1876, and all auditors elected under this section, shall severally be and continue to act as auditors until the first general meeting after their respective elections :

Provided that if any casual vacancy occurs in the office of any auditor, the directors shall forthwith call a special meeting for the purpose of supplying the same.

48. Every auditor shall be supplied with a copy of the half-yearly balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

Every auditor shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable times have access to the books, accounts and other documents of the Bank, and may (at the expense of the Bank) employ accountants or other persons to assist him in investigating such accounts, and may, in relation to such accounts, examine the directors or any other officer of the Bank.

The auditors shall make a report to the proprietors and shareholders upon the annual balance-sheet and accounts; and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the particulars required by the bye-laws made under this Act, and properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs, and in case they have called for any explanation or information from the directors, whether it has been given by the directors and whether it has been satisfactory.

Such report shall be read together with the report of the directors at the annual general meeting.

CHAPTER XI.

MEETINGS.

49. On the first Monday of the month of August in every year, or as soon after such day as is convenient, a general meeting shall be held at which the directors shall submit to the proprietors and shareholders a statement of the affairs of the Bank, made up to the preceding thirtieth day of June.

A notice convening such meeting, signed by the Secretary, shall be published in the local official Gazette, and in the case of the Bank of Bengal, also in the *Gazette of India*, at least fifteen days before the meeting is held.

50. Any ten or more proprietors or shareholders holding stock or shares, or both, to the aggregate amount of fifty thousand rupees, or any three directors, may convene a special meeting upon giving fifteen days' previous notice of such meeting, and of the purpose for which the same is convened, as well to the directors as also by public advertisement in the local official Gazette, and in two of the English daily newspapers and one of the Vernacular newspapers :

Provided that three months' previous notice shall be thus given of any special meeting held for the purpose of increasing or reducing the capital of the Bank, and shall also be served on every proprietor and shareholder.

51. No business shall be transacted at any meeting, whether general or special, unless a quorum of twenty proprietors or shareholders, or both, in person or by proxy, is present at the commencement of such business.

If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened by proprietors or shareholders not being directors, shall be dissolved : in any other case it shall stand adjourned to the same day in the following week at the same time and place, and if at such adjourned meeting a quorum is not present, it shall be adjourned *sine die*.

52. At meetings whether general or special, every election and other matter submitted to the meeting shall be decided by a majority of votes, except as in section thirteen and in section twenty-seven, clause 4, is specially provided,

and no person shall be allowed to vote at any such meeting in respect of any stock or share acquired by transfer, unless such transfer shall have been completed and registered at least three months before the time of such meeting.

And no shareholder shall be entitled to vote at any meeting in respect of any shares held by him alone or jointly, whilst any call due from him alone or jointly remains unpaid.

53. A declaration by the chairman of any meeting, except a special meeting held under section thirteen, that a resolution has been carried thereat upon a show of hands, shall be conclusive, and an entry to that effect in the Book of proceedings of the Bank shall be sufficient evidence of that fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution, unless, immediately on such declaration, a poll be demanded in writing by five proprietors or shareholders present and entitled to vote at such meeting.

54. If a poll be demanded, it shall be taken at such time and place, and (except at the special meeting last aforesaid) either by open voting or by ballot, as the chairman directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

55. The proceedings at any meeting, and all resolutions and decisions of such meeting, shall be valid and binding on the Bank, so far as such proceedings, resolutions and decisions are consistent with the provisions of this or any other Act for the time being in force and regulating the Bank.

56. At all such meetings, the proprietors or shareholders shall vote according to the following scale :—

The proprietor of capital stock amounting to Rs. 2,000, or the holder of shares of which the total nominal amounts are equal to Rs. 2,000, shall be entitled to.....	1 vote.
The proprietor of capital stock amounting to Rs. 10,000, or the holder of shares of which the total nominal amounts are equal to Rs. 10,000, shall be entitled to.....	2 votes
The proprietor of capital stock amounting to Rs. 20,000, or the holder of shares of which the total nominal amounts are equal to Rs. 20,000, shall be entitled to.....	8 "
The proprietor of capital stock amounting to Rs. 30,000, or the holder of shares of which the total nominal amounts are equal to Rs. 30,000, shall be entitled to.....	4 "
The proprietor of capital stock amounting to Rs. 40,000, or the holder of shares of which the total nominal amounts are equal to Rs. 40,000, shall be entitled to.....	5 "
The proprietor of capital stock amounting to Rs. 50,000, or the holder of shares of which the total nominal amounts are equal to Rs. 50,000, shall be entitled to.....	6 "
The proprietor of capital stock amounting to Rs. 75,000, or the holder of shares of which the total nominal amounts are equal to Rs. 75,000, shall be entitled to.....	7 "
The proprietor of capital stock amounting to Rs. 1,00,000 or the holder of shares of which the total nominal amounts are equal to Rs. 1,00,000, shall be entitled to ...	8 "
The proprietor of capital stock amounting to Rs. 1,25,000, or the holder of shares of which the total nominal amounts are equal to Rs. 1,25,000, shall be entitled to	9 "
The proprietor of capital stock amounting to Rs. 1,50,000, or the holder of shares of which the total nominal amounts are equal to Rs. 1,50,000, shall be entitled to	10 "
The proprietor of capital stock amounting to Rs. 1,75,000, or the holder of shares of which the total amounts are equal to Rs. 1,75,000, shall be entitled to.....	11 "
The proprietor of capital stock amounting to Rs. 2,00,000, or the holder of shares of which the total amounts are equal to Rs. 2,00,000, shall be entitled to.....	12 "

Where a person is both a proprietor of stock and a holder of shares, his shares shall, for the purpose of this section, be deemed to be stock.

No proprietor or shareholder shall be entitled to more than twelve votes at any such meeting.

57. Any proprietor or shareholder entitled to vote at any meeting under this Act may give a proxy in writing, either general or special, under his hand or the hand of his attorney duly authorized, to any other proprietor or shareholder.

Such proxy shall be produced at the time of voting, and shall entitle the person to whom it is given to vote on such matters as shall be authorized by the tenure of such proxy.

But no person shall be permitted to vote in virtue of such proxy unless it has been left for registration at the office of the Bank at least three clear days before the time for holding the meeting at which it is intended to be used :

Provided that a general proxy which has been registered at such office need not be again left for registration previous to any subsequent meeting.

Proxies existing and in force with reference to any of the present Banks, on the first day of May 1876, shall continue in force and be available at meetings under this Act, anything herein contained notwithstanding.

A general power-of-attorney shall be deemed a proxy within the meaning of this section.

58. If any proprietor or shareholder is a lunatic or idiot, he may vote by his committee or other legal curator, and if any proprietor or shareholder is a minor, he may vote by his guardian, or any one of his guardians, if more than one.

CHAPTER XII.

NOTICES.

59. Every notice or other document requiring to be served by the Bank upon any proprietor or shareholder may be served either personally, or by leaving it for, or sending it through the post by registered letter addressed to him at his registered place of abode ; and every notice sent through the post shall be deemed to have been served at the time at which, in the usual course of post, it would have been delivered.

60. Any proprietor or shareholder who changes his name or place of abode, or being a female marries, and the husband of any such female, respectively, shall not be entitled to recover any dividend or to vote until notice of the change of name or abode or marriage be given to the Bank, in order that the same may be registered.

Every notice to be given on the part of any proprietor or shareholder shall be left at the office of the Bank, or sent through the post by registered letter addressed to the Secretary of the Bank at its principal office.

61. Every person who, by operation of law, transfers or otherwise becomes entitled to any stock or shares, shall be bound by any and every notice or other document which, previously to his name and address being entered upon the register of the Bank in respect of such stock or shares, has been given to the person from whom he derives his title thereto.

62. When any notice or document is delivered or sent, in accordance with this Act, at or to the registered place of abode of a proprietor or shareholder, then and notwithstanding he be then deceased, and whether or not the Bank have notice of his decease, such service of the notice or other document shall, for all purposes of this Act, be deemed service thereof on him, or, if dead, on his heirs, executors, administrators, and every of them.

CHAPTER XIII.

BYE LAWS.

63. The directors shall, as soon as may be, make, and may from time to time alter, bye-laws regulating the following matters or any of them :—

(a) the maximum amount which may be advanced or lent by discount of bills, or otherwise, to any individual or partnership, without the security mentioned in section thirty-six, paragraph (a), Nos. (1) to (5) inclusive,

(b) the circumstances under which alone advances may be made to directors or officers of the Bank, or the relatives of such directors or officers, or to companies, firms or individuals with which or with whom such directors, officers, or relatives are connected as partners, directors, managers, servants, shareholders, or otherwise,

(c) the particulars to be contained in the half-yearly balance-sheet.

The directors may from time to time make bye-laws regulating the following matters or any of them :—

(d) the distribution of business amongst the directors,

(e) their remuneration,

(f) the delegation of any powers of the directors to committees consisting of members of their body,

(g) the procedure at the meetings of the board or of any committee of the directors,

(h) the books and accounts to be kept at the head and other offices respectively,

(i) the reports and statements to be prepared and made by the Chief Accountant, the heads of departments, and the other officers of the Bank,

(j) the management of the branches and agencies,

(k) the fees payable for certificates of shares or receipts for stock, or for registration of transfers of shares or stock,

(l) the renewal of certificates of shares and receipts for stock, which have been worn out or lost,

(m) and, generally, for the conduct of the business of the Bank :

Provided that no bye-law, or alteration or rescission of any bye-law, shall be of any validity, except in so far as the same is consistent with the provisions of this Act, and has been previously approved by the Governor-General in Council, and such approval has been signified in writing under the hand of a Secretary to the Government of India.

Proviso.

CHAPTER XIV.

MISCELLANEOUS.

64. The directors may institute, conduct, defend, compromise, refer to arbitration and abandon legal and other proceedings and claims by or against the Bank or the directors or officers of the Bank, and otherwise concerning its affairs.

65. In any suit brought against any shareholder to recover any debt due for any call or other monies due from him in his character of shareholder, it shall be sufficient to allege that the defendant is a shareholder of the Bank, and is indebted to the Bank in respect of a call made or other monies due, whereby a right to sue has accrued to the Bank;

and, on the hearing of any suit brought by the Bank against any shareholder to recover any debt due for any call, it shall be sufficient to prove that the name of the defendant is on the register of shareholders of the Bank as the holder of the shares in respect of which such debt accrued, and that the call was made, and that notice of such call was duly given to the defendant in pursuance of this or any other Act for the time being in force regulating the Bank;

and it shall not be necessary to prove the appointment of the directors who made such call, nor that a quorum of directors was present at the Board at which such call was made, nor that the meeting at which it was made was duly convened or constituted.

66. Nothing in the Thirty-third of George the Third, session two, chapter fifty-two, shall be deemed to render it unlawful for any servant of Government, or for any Judge of a High Court, to become a member of any corporation established under this Act.

67. Notwithstanding anything contained in this Act or in section 231 of Act No. X. of 1866, whenever the proprietors and shareholders have passed a special resolution that the Bank shall be wound up voluntarily under the Indian Companies Act, 1866, the Bank shall be wound up accordingly, as if it were a Company under that Act:

Provided that no such special resolution shall be deemed to have been passed unless at least one-third of the proprietors and shareholders holding at least one-half of the paid-up capital of the Bank for the time being, be present in person or by proxy, and a majority poll by open voting in favour of the said resolution, and such resolution has been confirmed by a majority of such proprietors and shareholders at a subsequent special meeting held at an interval of not less than one month, nor more than two months, from the date of the meeting at which such resolution was first passed.

68. And whereas the Government of India has agreed to sell, and the directors of the present Bank of Bengal have agreed to purchase, at a premium of twenty-two and a half per centum, the said two thousand two hundred shares of one thousand rupees each held by the Government of India in the same Bank; and it is intended that the directors of the Bank of Bengal as constituted by this Act shall cancel two thousand of such shares, and sell for the benefit of the Bank four hundred shares in the same Bank corresponding with the remaining two hundred shares so agreed to be sold and purchased;

and whereas the Government of India has agreed to sell, and the directors of the present Bank of Madras have agreed to purchase, at a premium of ten per centum, the said five hundred and sixty-two and a half shares held by the Government of India in the same Bank; and it is intended that the directors of the Bank of Madras as constituted by this Act shall cancel the same shares;

And whereas the directors of the present Bank of Madras have purchased and cancelled other sixty-two and a half shares in such Bank;

And whereas the said respective directors of the present Bank of Bengal and Bank of Madras had no power to enter into the said agreements with the Government of India, and the directors of the Bank of Bengal as constituted by this Act

have no power to sell the four hundred shares referred to in this section, and the said directors of the present Bank of Madras had no power to purchase and cancel the said other sixty-two and a half shares ;

And whereas the directors of the Bank of Bengal as constituted by this Act have no power to cancel the said two thousand shares and the said directors of the Bank of Madras as constituted by this Act have no power to cancel the said five hundred and sixty-two and a half shares ;

And whereas it is expedient to confirm the said agreements with the Government of India, and to indemnify the said respective directors of the present Bank of Bengal and Bank of Madras for entering into the same, and to confirm the said purchase of the said other sixty-two and a half shares by the directors of the present Bank of Madras, and to indemnify the same directors for making the same, and for cancelling the same shares, and to empower the directors of the Bank of Bengal as constituted by this Act to sell the said four hundred shares, and to empower the respective directors of the Bank of Bengal and Bank of Madras as constituted by this Act to cancel the said shares so intended to be cancelled ; it is hereby further enacted as follows:—

(a) The said agreements with the Government of India are hereby confirmed, and the said respective directors of the present Bank of Bengal and Bank of Madras are hereby indemnified for entering into the same ; and no suit or other proceeding shall be maintained against any such director in respect of anything *bonâ fide* done in pursuance of either of such agreements.

(b) The said purchase of the said other sixty-two and a half shares is hereby confirmed, and the said directors of the present Bank of Madras are hereby indemnified for making the same and for cancelling the same shares ; and no suit or other proceeding shall be maintained against any such director in respect of anything *bonâ fide* done in effecting such purchases and cancellation.

(c) The directors of the Bank of Bengal as constituted by this Act shall have power to sell, and shall, as soon as conveniently may be, sell, the said four hundred shares, either together or in parcels, and either by public auction or private contract, and shall apply the proceeds in or towards paying the price of the shares of the Government of India so agreed to be purchased by the directors of the present Bank as aforesaid, or otherwise for the benefit of the Bank of Bengal as constituted by this Act.

(d) The directors of the Bank of Bengal as constituted by this Act shall have power to cancel, and shall, as soon as conveniently may be, cancel, the said two thousand shares, and the directors of the Bank of Madras as constituted by this Act shall have power to cancel, and shall, as soon as conveniently may be, cancel, the said five hundred and sixty-two and a half shares.

ACT V. OF 1879.

(Received the assent of the Governor-General on the 22nd March 1879.)
An Act to amend the Presidency Banks Act, 1876.

Whereas it is expedient to amend the Presidency Banks Act, 1876, in manner hereinafter appearing: It is hereby enacted as follows:—

Preamble.

Short title,
Commencement.

1. This Act may be called "The Presidency Banks Act, 1879," and it shall come into force on the first day of May 1879.

Amendment of Act XI.
of 1876, Sec. 28.

2. To the first clause of Section 28 of the Presidency Banks Acts, 1876, the following proviso shall be added, that is to say:—

"Provided that no person shall be chosen to be President or Vice-President twice in succession."

Amendment of Section 34
of the same Act.

3. In the same Act, Section 34, before the words "no Khazanchi," the words "without the previous sanction of the Board" shall be inserted.

4. In the same Act, Section 36, clause (a), sub-clause (4), after the words

Amendment of Section 36. "Municipal body" the words "or any body of Commissioners for making improvements in any port as of trustees of any port" shall be inserted.

In the same section, the words "in the case of the Bank of Madras" shall be omitted in both the places in which they occur.

In the same section, after clause (m), the following clause shall be inserted, that is to say, "(m m) the borrowing of money in India for the purposes of the Bank's business, and the giving of security for money so borrowed by pledging assets or otherwise."

Amendment of Section 37.

5. In Section 37 of the same Act, for clause (d), the following shall be substituted, that is to say:—
 "(d) Nor shall they (except upon the security mentioned in Section 36, paragraph a, Nos. 1 to 5 inclusive)

"discount bills for any individual or partnership-firm for an amount exceeding in the whole at one time such sum as may be prescribed by the bye-laws for the time being in force, or

"lend or advance in any way to any individual or partnership-firm an amount exceeding in the whole at any one time such sum as may be so prescribed."

Amendment of Section 63.

6. In Section 63 of the same Act, clause (a), for the words "lent by discount of bills or otherwise to," the words "lent to or for which bills may be discounted for" shall be substituted.

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